TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909-1910.

No. 586

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF THE AMOSKEAG SAVINGS BANK OF MANCHESTER, NEW HAMPSHIRE, PLAINTIFF IN ERROR,

vs.

LAWSON PURDY, CHARLES J. McCORMACK, JAMES H TULLY, CHARLES PUTZEL, AND HUGH HASTINGS, AS COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

FILED MAY 19, 1910.

(22,187.)

(22,187.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 293.

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF THE AMOSKEAG SAVINGS BANK OF MANCHESTER, NEW HAMPSHIRE, PLAINTIFF IN ERROR,

vs.

LAWSON PURDY, CHARLES J. McCORMACK, JAMES H. TULLY, CHARLES PUTZEL, AND HUGH HASTINGS, AS COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 25, 1911.

Petition.

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Amoskeag Savings Bank of Manchester, New Hampshire, Relator,

against

LAWSON PURDY, President, and FRANK RAYMOND, CHARLES J. McCORMACK, JAMES H. TULLY, CHARLES PUTZEL, and HUGH HASTINGS, as Commissioners of Taxes and Assessments of the City of New York, Defendants.

To the Supreme Court of the State of New York:

The petition of Amoskeag Savings Bank of Manchester, New Hampshire respectfully shows upon information and belief,

4 I. That the defendants above named are the Commissioners of Taxes and Assessments of the City of New York and constitute the Board of Taxes and Assessments of said City, and were such on the first day of June, 1908, and continued to be to and including the 1st day of September, 1908.

II. That on the first day of June, 1908, the petitioner was, and still is a corporation duly created by and under the laws of the State of New Hampshire, and authorized and empowered to transact the business of banking, and a non-resident of the State of New York.

III. That the petitioner has been assessed for taxation for the year 1908 on valuation of its bank shares, and its name has been entered in Statement of Bank assessment and taxation made by the Board of Taxes and Assessments of the City of New York, for the year 1908.

IV. That on or before the first day of August, 1908, the defendants made an assessment-roll of the shares of stock of banks or banking associations organized under the authority of this State or of the United States having their principal offices in the City of New York and of the owners thereof, and on said date gave notice that they would meet on the third Tuesday of August, 1908, to review such assessments.

V. That in said assessment-roll the Petitioner was assessed upon its shares of stocks in banks or banking associations organized under the authority of the United States at a valuation as follows:

Shares.	Banks.	Assessed value.
100	American Exchange National	$19,800
60	Chemical National	16,920
160	Shares in all, assessed at a total value of	$36,720

5 VI. That on the third Tuesday of August, 1908, the Petitioner duly appeared before the defendants at such meeting and made and filed a statement, under oath, specifying that said as-

sessment was incorrect in that the amount of the Petitioner's debts should be deducted therefrom and made written application to said Board to correct such assessment by deducting the amount of its indebtedness therefrom and so cancelling the whole thereof.

VII. That at the time of making such written application the Petitioner gave due proof to the said Board and now asserts the fact to be that the full value of all personal property, exclusive of bank shares, owned by the Petitioner on the first day of June, 1908, and not exempt by law from taxation was nothing and that the just debts owing by the Petitioner on said date, exceeded the assessed valuation of said National Bank shares and exceeded the value on said day of the gross personal estate of the Petitioner, including its bank shares, after deducting therefrom the value of the property of the Petitioner not taxable anywhere and the value of its property taxable elsewhere, and that no portion of such debts has been deducted from the assessment of any personal property of the Petitioner other than said National Bank shares or has been used as an off-set in the adjustment of any assessment for personal property, whether in the City and County of New York, or in any other County or State, for the year 1908, nor has any application been made for that purpose, and that no portion of said indebtedness has been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation.

VIII. That thereafter the defendants fixed the value of the said property of the Petitioner at the valuations hereinbefore stated and completed the assessment-roll and filed the same on the first day of September, 1908, and forthwith gave notice that such assessment-roll had been finally completed and filed.

6 IX. That the petitioner was the owner on June 1st, 1908, of the shares of stock in National Banks hereinbefore stated and unless the said assessment against the Petitioner be corrected, the Petitioner will be compelled to pay taxes thereon as prescribed by Section 24 of the Tax Law.

X. That under the laws of the State of New York every individual citizen of New York who has moneyed capital invested in taxable personal property otherwise than in bank shares is permitted to deduct from that capital the sum of all his debts not contracted or incurred for the purpose of evading taxation or in the purchase of non-taxable property or securities, leaving the remainder alone subject to taxation.

XI. That the refusal of the defendants to allow the Petitioner a deduction of its debts from its capital and property invested in the shares of National banks held and owned by the Petitioner is illegal and makes a discrimination against the said bank shares owned by the Petitioner as subjects of taxation unfavorable to the Petitioner as the owner of such shares and is contrary to the restriction contained in Section 5219 of the United States Revised Statutes upon the taxation of National bank shares and of the owners on account thereof by the State and that the Petitioner is entitled to a deduction and allowance upon the valuation for taxation of National bank

shares belonging to it for all the said debts set forth in the foregoing statement.

XII. And the petitioner shows that the said assessment upon the said valuation of bank shares for the purpose of taxation is illegal, void and erroneous, and that the petitioner has been injured by such illegal and erroneous assessment, and the petitioner specifies the following grounds of illegality and error:

That the said bank shares were and each of them was exempt from assessment or taxation under the laws of the United States.

7 That the said assessment of said bank shares, and each and every of them, was invalid, on the ground that it was and is repugnant to the laws of the United States.

That the said Board have over-estimated the valuation of the property of the petitioner for the purpose of taxation, and illegally and erroneously included in their valuation of the personal property of the petitioner in said statement of Bank Assessment and Taxation the following sums, to wit, the aforesaid valuation of the bank shares of National banks located in the City of New York.

That the Petitioner is entitled to a deduction and allowance upon the said valuation for taxation of bank shares belonging to it, for such just debts as were owing by said Petitioner on said first day of June, 1908.

That the said Board have not allowed the following items of deduction or some part thereof upon the statement and valuation of the said bank shares of the Petitioner, to wit, the indebtedness of the Petitioner as per statement.

That the said Board did not, in making the said assessment, after assessing and ascertaining the valuation of the Petitioner's said bank shares, in the mode directed by the laws of the State of New York, deduct therefrom or allow thereon the value of the Petitioner's property taxable elsewhere or not taxable, and the just debts of the Petitioner, the amount of which items exceeded the value of the gross assets of the Petitioner, including said bank shares.

That said assessment and taxation of bank shares for the year, 1908, and each and every of them, was and is illegal and void because by the laws of the State of New York the rate of tax upon the shares of stock of banks and banking associations shall be one per cent upon the value thereof, as ascertained and fixed in the manner thereinbefore provided and the owners of the stock of banks

8 and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any reason whatsoever.

Wherefore your petitioner prays that a writ of certiorari may be issued and allowed by this Honorable Court, directed to the Commissioners of Taxes and Assessments for the City of New York commanding them to certify and return to this Court, all and singular, their proceedings, decisions and actions in the premises, with the dates thereof respectively, and all and singular the documents, records and papers before them, touching or concerning the valuations for assessment or taxation of the capital stock and bank shares of

your petitioner, or in any wise in respect thereto, and all and singular the documents, records and papers before them, touching or concerning the same, and to return by what authority or claim to authority they have made said assessment or valuation, or that such evidence may be taken as the Court may direct, or a referee be appointed to take such evidence and report the same to the Court, and that the decisions and actions of the said Board may be reviewed and corrected on the merits by this Honorable Court, and that the aforesaid errors of said Board may be corrected according to law, and that the assessment upon said petitioner for or in respect of said bank shares may be set aside and vacated, and that your petitioner may have such other or further relief in the premises as may be meet. That no previous application has been made for this order.

RICHARDS & HEALD,
Attorneys for Petitioner.

Office and Post Office Address, No. 141 Broadway, Manhattan, New York City.

BROWNELL & PATTERSON,
Of Counsel for Petitioner.

No. 71 Wall Street, New York.

9 County of New York, ss:

Dickinson W. Richards, being duly sworn, says that he is one of the attorneys in the matter of the petitioner hereinbefore named; that he has read the foregoing petition, and knows the contents thereof; that the same is true to his knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; that the reason why this verification is not made by said petitioner is that said petitioner is a foreign corporation, and that the grounds of deponent's belief as to all matters not stated upon his own knowledge, are the statements of the officers of said petitioner, and the report of the proceedings of the defendants and the statements of the city officials and others, all of which deponent believes to be true.

DICKINSON W. RICHARDS.

Sworn to before me this 8th day of September, 1908.

FRANK SOWERS,
Commissioner of Deeds, New York City.

10 *Order Allowing Writ.*

At a Special Term of the Supreme Court, Held in and for the County of New York, at Part II thereof, at the Court House in the Borough of Manhattan, on the 9th Day of September, 1908.

Present: Hon. Henry Bischoff, Justice.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. AMOSKEAG SAVINGS BANK OF MANCHESTER, NEW HAMPSHIRE, Relator,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY OF NEW YORK, Defendants.

On reading and filing the Petition of the above-named relator, verified the 8th day of September, 1908, and on motion of Richards & Heald, attorneys for the said relator, it is

Ordered, that a writ of certiorari in the form hereto annexed be issued, directed to the said Commissioners of Taxes and be returnable as in said form provided and be allowed and be signed and sealed by the Clerk of the County of New York and be served on or before the 18th day of September, 1908.

(Annexed to this order is a form of Writ in the same words as that issued and printed in this Record.)

11 *Writ of Certiorari.*

The People of the State of New York on the relation of Amoskeag Savings Bank of Manchester, N. H., to Lawson Purdy, President, and Frank Raymond, Charles J. McCormack, James H. Tully, Charles Putzel, and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York, Greeting:

Whereas we have been informed in our Supreme Court in and for the First Judicial District by the petition of the Amoskeag Savings Bank of Manchester, N. H., verified the 8th day of September, 1908, that the assessment for taxation for the year 1908, of the shares of stock of banks or banking associations organized under the authority of the United States of the Relator as entered upon the assessment roll and the statement of the b[illegible] assessment and taxation upon said shares made by the Board of Tax Commissioners of the City of New York is erroneous and [illegible] legal and being willing for certain causes to be certified of the proceedings, decisions and actions had by or before you in the matter of making such assessment.

We, therefore, do command you, that all and singular, the said proceedings, decisions and actions in the premises, with the dates thereof respectively and all and singular the evidence, affidavits, notices, writings, documents, records and papers before you, touching or concerning the valuation for assessment or taxation of the bank shares of said relator, you do certify and return to us at a Special

Term of the Supreme Court to be held in and for the County of New York, at Part III thereof, in the Court House in the Borough of Manhattan, on the second Monday of October, 1908, at the opening of the Court on that day and that a copy of your Return be served on the relator's attorneys on or before the 5th day of October, 1908.

12 To the end that said proceedings, decisions and actions may be reviewed and corrected on the merits by our said Court and that the said errors of your Board may be reviewed and corrected according to law and that said assessment may be set aside and vacated and that this Court may further cause to be done thereupon what of right and according to law ought to be done. Witness, Hon. Edward Patterson, Presiding Justice of our Supreme Court in and for the First Judicial District, at the County Court House in the County of New York, on the 9th day of September, 1908.

(By the Court.)

[L. S.] PETER J. DOOLING, *Clerk.*

RICHARDS & HEALD,
Attorneys for Relator.

141 Broadway, Manhattan, New York City.

Endorsed.

The within Writ is allowed September 9th, 1908.

HENRY BISCHOFF,
Justice of the Supreme Court.

13 *Return to Writ.*

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of AMOSKEAG SAVINGS BANK OF MANCHESTER, N. H., Relator,
against
LAWSON PURDY, FRANK RAYMOND, CHARLES J. McCORMACK, JAMES H. TULLY, Charles Putzel, and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York, Defendants.

To the Supreme Court of the State of New York:

We, Lawson Purdy, Frank Raymond, Charles J. McCormack, James H. Tully, Charles Putzel, Hugh Hastings and John J. Halleran, Commissioners of Taxes and Assessments of The City of New York, respectively return to the writ of certiorari issued out of this Court on the 9th day of September, 1908, as follows:

At the date said writ was issued we were, and since prior to June 1, 1908, have been Commissioners of Taxes and Assessments of said City, excepting that John J. Halleran was appointed September 23, 1908. The return now made by us is based in part upon records

banks and banking associations shall be entitled to no reduction from the taxable value of their shares because of the present indebtedness of such owners or for any reason whatsoever."

They accordingly without requiring any proof of the existence or nature of the indebtedness claimed by the relator denied the relator's application and confirmed the said assessments at the original figure.

Thereafter and on or before September 1, 1908, they finally completed and duly verified and filed the assessment roll containing said assessments and duly gave notice thereof, pursuant to Section 38 of the Tax Law, and the said roll duly remained open to public inspection as required by said section.

The tax on said assessments at the rate of one per centum, as prescribed by Section 24 of the Tax Law, was duly extended on said roll and thus the tax upon the shares of stock of the relator of the American Exchange National Bank was $198, and upon its shares of stock of the Chemical National Bank $169.20.

18 Thereafter, on or before December 15, 1908, the said Commissioners, as required by Section 24 of the Tax Law, made and mailed to the President or Cashier of each of said banks or banking associations, a statement setting forth the amount of the capital stock, surplus and undivided profits, the number of outstanding shares, the value of each share of stock taxable as ascertained as above described and as directed by Section 24 of the Tax Law and the aggregate amount of tax to be collected and paid by such bank or banking association under said section, and at the same time made and sent a certified copy of said statement to the Receiver of Taxes of the City of New York.

With respect to the allegations contained in relator's petition upon which the said writ was granted, we allege that the facts as to the assessment by the defendants of the said bank shares and as to the taxable status thereof on the first day of June, 1908, were as hereinbefore stated and not otherwise; and with respect to the averments and conclusions of law contained in said petition and particularly in paragraphs X, XI, & XII thereof, we deny each and every such averment and conclusion and we allege that the said shares of stock, together with the shares of all the other banks and banking associations in the City of New York, were taxed for the year 1908, at one per cent. of the value of said shares estimated as directed by Section 24 of the Tax Law of the State of New York; that the rate of taxation upon all other property, real and personal in the said city for the year 1908, was 1.61407; and that neither the assessment nor the taxation of the shares of stock of said bank or banking associations was at a greater rate than that made or assessed upon other moneyed capital in the hands of individual citizens of the State of New York.

19 We accordingly certify and return that the said assessments were not erroneous by reason of overvaluation or illegal, erroneous or void upon any of the grounds specified in the said petition, and that the relator has not been, and will not be, injured or aggrieved thereby.

In Witness Whereof, we have hereunto subscribed our names, this 25th day of May, 1909.

LAWSON PURDY,
JAMES H. TULLY,
HUGH HASTINGS,
JOHN J. HALLERAN.

CITY, COUNTY AND STATE OF NEW YORK, *ss.:*

We Lawson Purdy, James H. Tully, Hugh Hastings and John J. Halleran, Commissioners of Taxes and Assessments of The City of New York, being severally duly sworn, say, and each for himself says, that the foregoing return is true of his own knowledge except as to the matters herein stated to be alleged on information and belief, and as to those matters he believes it to be true.

LAWSON PURDY,
JAMES H. TULLY,
HUGH HASTINGS,
JOHN J. HALLERAN.

Sworn to before me this 25th day of May, 1909.

CHARLES H. WOODHULL,
Notary Public, N. Y. Co.

#110.

EXHIBIT "A."

1908.

Statement under Oath, as Provided by Chapter 550, Laws of 1901, as Amended by Chapter 126, Laws of 1902 of the American Exchange National Bank, Borough of Manhattan.

1. Authorized Capital Stock	$5,000,000
2. Number of Shares	50,000
3. Par Value of Shares	100
4. Amount of Capital Stock paid in	5,000,000
5. Amount of Surplus and Undivided Profits	4,913,000

Correct.

E. BURNS, *Cashier.*

Line No.	Name of shareholder.	Residence.	Number of shares.
28	Amoskeag Savings Bank.	Manchester, N. H.	100

STATE OF NEW YORK,
City of New York,
Borough of Manhattan, ss:

Edward Burns being duly sworn, deposes and says, that he is Cashier of the American Exchange National Bank and that the fore-

going list of names and residences of shareholders of said Bank, with number of shares held by each, statement of authorized capital stock, par value of shares, amount of capital stock paid in and amount of surplus and undivided profits of said Bank is correct, as
21 shown on our books June 1, 1908, made in pursuance of Chapter 550, Laws of 1901, as amended by Chapter 126, Laws of 1902.

EDWARD BURNS.

Subscribed and sworn to before me this 30th day of June, 1908.

ELBERT A. BENNETT,
Notary Public, Kings County.

Certificate filed in New York Co.

EXHIBIT "AA."

1908.

Statement under Oath, as Provided by Chapter 550, Laws of 1901, as Amended by Chapter 126, Laws of 1902, of the Chemical National Bank, Borough of Manhattan.

1.	Authorized Capital Stock	$5,000,000
2.	Number of Shares	30,000
3.	Par Value of Shares	100
4.	Amount of Capital Stock paid in	3,000,000
5.	Amount of Surplus and Undivided Profits	5,455,286.14

Correct.

FRANCIS HALPIN, *Cashier.*

Line N	Name of shareholder.	Residence.	Number of shares.
10.	Amoskeag Savings Bank,	Manchester, N. H.	60

22 STATE OF NEW YORK,
City of New York,
Borough of Manhattan, ss:

Francis Halpin being duly sworn, deposes and says: That he is Cashier of the Chemical National Bank of New York, N. Y. and that the foregoing list of names and residences of shareholders of said Bank, with number of shares held by each, statement of authorized capital stock, par value of shares, amount of capital stock paid in and amount of surplus and undivided profits of said Bank is correct, as shown on our books June 1, 1908, made in pursuance of Chapter 550, Laws of 1901, as amended by Chapter 126, Laws of 1902.

FRANCIS HALPIN.

Subscribed and sworn to before me this 30th day of June, 1908.

EDWARD P. BROWN,
Notary Public, Kings County.

Certificate filed in New York Co.

Exhibit "B."

State of New Hampshire,
County of Hillsborough, ss:

George Henry Chandler, being duly sworn, deposes and says that he is the Treasurer of the Amoskeag Savings Bank of Manchester, New Hampshire; that on the first day of June, 1908, said Savings Bank was the owner of the following described shares of bank stock, which have been assessed by the Commissioners of Taxes and Assessments of The City of New York against said Bank, as owner, for the Taxes for the year 1908, at the following valuations:

23

Shares.	Banks.	Assessed value.
100	shares American Exchange National	$19,800
60	" Chemical National	16,920
160	Shares in all, assessed at a total value of	$36,720

That the full value of all the personal property, exclusive of said bank shares, owned by deponent's said bank (and not exempt by law from taxation in the State of New York) on the first day of June, 1908, did not exceed $1.00; that the just debts owing by deponent's said bank on said date amounted to $11,630,493.08, and that no portion of such debts has been deducted from the assessment of any personal property of the deponent's said bank, or has been used as an offset in the adjustment of any assessment for personal property whether in the County and State of New York or in any other County or State for the year 1908 or incurred in the purchase of non-taxable property or securities or for the purpose of evading taxation.

And the said Savings Bank claims and insists that under the Tax Law of the State of New York, it is provided that the assessment and taxation of shares of bank stock shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of such State, and that inasmuch as the effect of the laws of the State of New York is to permit every individual citizen of New York who has moneyed capital invested in taxable personal property otherwise than in bank shares, to deduct from that capital the sum of all his debts not contracted or incurred for the purpose of evading taxation or in the purchase of non-taxable properties or securities, leaving the remainder alone subject to taxation, to refuse to make the deduction of the debts of the said Savings Bank from its capital and property invested in the shares of banks held and owned by said Savings Bank is illegal and in violation of the
24 laws of the State of New York, and is to make a discrimination against the said Bank Shares owned by said Savings Bank as subjects of taxation unfavorable to the said Savings Bank as the owner of such shares, and complaint is also made that this is

contrary to the restriction contained in Section 5219 of the U. S. Revised Statutes upon the taxation of bank shares and of the owners on account thereof, by the State.

That annexed hereto is a full and correct statement of all the assets and liabilities of said Savings Bank on the first day of June, 1908.

The said Savings Bank claims and insist that it is entitled to a deduction and allowance upon the valuation for taxation of bank shares belonging to it for all the said debts set forth in the foregoing statement; and that the said assessment of its said bank shares should be cancelled accordingly.

GEORGE HENRY CHANDLER.

Subscribed and sworn to before me this 14th day of August, 1908.

WILLIS B. KENDALL,
Notary Public.

My commission expires Feb. 8, 1909.

STATE OF NEW HAMPSHIRE,
County of Hillsborough:

I, Thos. D. Luce, Clerk of the Superior Court (for the County of Hillsborough, the same being a court of record of the aforesaid county, having by law a seal) do hereby certify that Willis B. Kendall, Esquire, whose name is subscribed to the attached certificate of acknowledgement, proof or affidavit, was at the time of taking said acknowledgement, proof or affidavit, a Notary Public duly commissioned and sworn and residing in said county, and was, as such, an officer of said state, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof
25 and acknowledgement of deeds and other instruments in writing to be recorded in said state, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 14th day of August, 1908.

[SEAL.]

THOS. D. LUCE.

Statement of Assets and Liabilities of the Amoskeag Savings Bank as of the First Day of June, 1908.

Assets.

Notes	$5,423,121.07
Stocks	1,874,975.00
Bonds	3,453,450.00
Real Estate	40,000.00
Cash	

Now upon reading said petition, order, writ and return, all heretofore duly filed herein and upon reading the said stipulation of facts conceded and filing the same, and after hearing Richards & Heald, Esqrs., attorneys for relator (John O. Heald of counsel), and Francis K. Pendleton, Corporation Counsel, attorney for defendants (William H. King of counsel) and due deliberation having been had, and it appearing to the Court that the said assessments were not illegal for any reason alleged in the petition herein, it is

. Ordered that the relator's motion be and the same hereby is denied, and the defendants' motion be and the same hereby is granted; and that the said assessments be and the same hereby are confirmed and the said writ of certiorari and this proceeding be and the same hereby are dismissed with costs to the defendants.

28 *Stipulation Referred to in Order.*

Supreme Court, New York County, Special Term, Part VI.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. AMOSKEAG SAVINGS BANK OF MANCHESTER, NEW HAMPSHIRE, Relator,
against
LAWSON PURDY, President, and Others, as Commissioners of Taxes, etc., Defendants.

It is stipulated and agreed that upon the hearing of this proceeding the following facts are to be taken as true without evidence being furnished thereof:

I.

That on the first day of June, 1908, the relator was and still is a non-resident of the State of New York and a corporation, duly created by and under the Laws of the State of New Hampshire, located in that State and authorized and empowered to transact the business of banking.

29 II.

That on the first day of June, 1908, relator was the owner of one hundred (100) shares of stock in the American Exchange National Bank and sixty (60) shares of stock in the Chemical National Bank, both being banks organized as National Banking Associations under the Act of Congress, and situated in the City, County and State of New York.

III.

That the defendants assessed the said shares of bank stock for purposes of taxation for the year 1908 against the relator at a taxable value per share of $198.26 on the shares of the American Exchange National Bank and at $281.84 on the shares of the Chemical National Bank, thus making assessments respectively of $19,800 upon its shares in the American Exchange National Bank and $16,920

upon its shares in the Chemical National Bank, and entered its name, address, the number of shares, and the assessments aforesaid in the assessment roll of the City of New York for the year 1908. The taxable value per share in each case was obtained by the defendants, in accordance with the provisions of the Tax Law of the State of New York, by adding together the capital, surplus and undivided profits of the bank and dividing by the number of its outstanding shares.

IV.

That the assessments aforesaid were made in the method prescribed in and by proceedings taken in due compliance with provisions of the Tax Law of the State of New York relating to assessments of bank shares as uniformly administered in the tax districts of the City, county and State of New York.

30

V.

That on the first day of June, 1908, the just debts owing by the relator exceeded the value of its gross personal estate, including its bank shares, after deducting therefrom the value of its property not taxable anywhere and the value of its property taxable elsewhere, and that no portion of such debts has been deducted from the assessment of any of its personal property or been used as an offset in the adjustment of any assessment for personal property nor has any application been made for that purpose other than to these defendants and that no portion of said indebtedness was contracted or incurred in the purchase of non-taxable property or securities or for the purpose of evading taxation.

VI.

That the relator at the time and place prescribed by law for presenting objections, made application to the defendants for the correction and cancellation of the assessments aforesaid upon the sole ground that it was entitled to have its indebtedness aforesaid deducted from the assessed valuations of its said bank shares. That said application was denied upon the ground that the law did not permit the relator to have any deduction from the taxable valuation of its bank shares on account of its personal indebtedness.

VII.

That the general tax rate of the City of New York for the year 1908 on personal property, not including bank shares was 1.61407 per centum.

Dated, New York, June 18, 1909.

RICHARDS & HEALD,
Attorneys for Relator.
FRANCIS K. PENDLETON,
Corporation Counsel, Attorney for Defendants.

31

Waiver of Certification.

It is hereby stipulated that the foregoing are true copies of the Notice of Appeal, the Order appealed from and of the papers which were used in the Court below and are specified in the Order, all of which are on file in the office of the Clerk of the County of New York, and of the whole thereof; and certification thereof, pursuant to Sections 1353 and 3301 of the Code of Civil Procedure, or otherwise, is hereby waived.

Dated, New York, October 11, 1880.

RICHARDS & HEALD,
Attorneys for Appellant.
FRANCIS K. PENDLETON,
Corporation Counsel, Attorney for Respondents.

Affidavit of No Opinion.

COUNTY OF NEW YORK, ss:

John O. Heald, being duly sworn, says: that he is one of the attorneys for the relator in this proceeding and was such at the time that this case was tried. That no opinion was given by the Justice presiding upon the decision of this proceeding.

JOHN O. HEALD.

Sworn to before me this 20th day of September, 1880.

FRANK SOWERS,
Commissioner of Deeds for New York City.

32

Order of Affirmance.

At a Term of the Appellate Division of the Supreme Court Held in and for the First Judicial Department, in the County of New York, on the 5th day of November, 1880.

Present: Hon. George L. Ingraham,
" Frank C. Laughlin,
" John Proctor Clarke,
" James W. Houghton,
" Francis M. Scott,
Justices.

PEOPLE ex Rel. Amoskeag Savings Bank of Manchester, New Hampshire, Appellant,
vs.
LAWSON PURDY et al., Comm'rs, &c., Respondents.

Affirmance of Order.

and said appeal having been argued by Mr. J. O. Heald of counsel for the appellant and by Mr. W. H. King of counsel for the respondents, and due deliberation having been had thereon, it is hereby unanimously ordered that the order so appealed from be and the same is hereby affirmed with $10 costs and disbursements.

Notice of Appeal.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of the Anuskeag Savings Bank of Manchester, New Hampshire, Relator,

against

LAWSON PURDY, President, and FRANK RAYMOND, CHARLES J. McCormack, James H. Tully, Charles Putzel, and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York, Defendants.

Take Notice, that the above named relator, the Anuskeag Savings Bank hereby appeals to the Court of Appeals of the State of New York from the Order of affirmance of the Appellate Division of the Supreme Court of the First Department, entered in the office of the Clerk of said Court on the 5th day of November, 1909, a certified copy of which was filed in the office of the Clerk of the County of New York on the 12th day of November, 1909, and from each and every part of said order.

Dated, November 23, 1909.

Yours, &c.,

RICHARDS & HEALD,
111 *Broadway, Manhattan, New York City,*
Attorneys for Relator and Appellant.

To Francis K. Pendleton, Esq., Corporation Counsel, Attorney for Defendants and Respondents, and Peter J. Dooling, Esq., Clerk.

Waiver of Certification.

It is hereby stipulated that the foregoing are true copies of the Notice of Appeal, the Order appealed from and of the papers upon which the Order was founded and upon which the Court below acted and certification thereof is hereby waived.

Dated, New York, Dec. 8, 1909.

RICHARDS & HEALD,
Attorneys for Appellant.

ation had thereon, did order and adjudge that the Order of the Appellate Division of the Supreme Court appealed from herein, be and the same hereby is affirmed with costs on authority of People ex rel. Bridgeport Savings Bank vs. Feitner, etc., (191 N. Y. 88). And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said Order be affirmed with costs, etc., as aforesaid.

37 And hereupon, as well as the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, etc.

R. M. BARBER,
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE.
ALBANY, *February 23rd*, 1910.

I hereby certify that the preceding record contains a correct transcript of the proceedings in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.]

R. M. BARBER, *Clerk.*

38 At a Special Term, Part II. of the Supreme Court, Held in and for the County of New York, at the County Court House in said County, on the 25th Day of February, 1910.

Present: Hon. M. Warley Platzek, Justice.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The Amoskeag Savings Bank of Manchester, New Hampshire, Relator,

against

Lawson Purdy, President; CHARLES J. McCORMACK, JAMES H. Tully, Charles Putzel, and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York, Defendants.

The relator in the above entitled proceeding having appealed to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court, First Department, entered and filed in the office of the Clerk of said Appellate Division on the 5th day of November, 1909, affirming the order herein entered and filed in the office of the Clerk of the County of New York on or about the 22nd day of June, 1909, dismissing the writ of [illegible]

sworn, did depose and say that he resides in Manchester, New Hampshire; that he is the Treasurer of the Amoskeag Savings Bank, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of trustees of said corporation, and that he signed his name thereto by like order.

[SEAL.] WILLIS B. KENDALL,
Notary Public.

My Commission expires January 19th, 1914.

STATE OF NEW HAMPSHIRE,
County of Hillsboro:

I, John C. Bikford (Clerk of the Police Court of the City of Manchester the same being a court of record of the aforesaid county, having by law a seal) do hereby certify that Willis B. Kendall, Esquire, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public, duly commissioned and sworn and residing in said county, and was, as such, an officer of said state, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said state, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 25 day — April, 1910.

[SEAL.] JOHN C. BIKFORD,
Clerk of Police Court, City of Manchester.

44 STATE OF NEW YORK,
County of New York, ss:

On this 3rd day of May, 1910, before me personally appeared Arthur P. West, Res. Vice President of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the County of New York that he is the Res. Vice President of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said Company, and that he signed said instrument as Res. Vice President of said Company by like authority; and that the liabilities of said Company do not exceed its assets, as ascertained in the manner provided in Section 3, Chapter 720, of New York Session laws of 1893. And the said Arthur P. West, further said that he is acquainted with Wm. A. Thompson and knows him to be the Assistant Secretary of said Company; that the signature of the said Wm. A. Thompson, subscribed

to the said instrument is in the genuine handwriting of the said Wm. A. Thompson and was thereto subscribed by the like order of the said Board of Directors and in the presence of him, the said Res. Vice President.

A. L. TRAVIS,
Notary Public for County of New York.

Certificate filed in Kings, Queens, Richmond, Westchester, Nassau & Suffolk Counties.

Copy of By-Law.

Be it Remembered, That at a regular meeting of the Board of Directors of the National Surety Company, duly called and held on the fourth day of February, 1908, a quorum being present, the following By-Law was adopted:

"ARTICLE XIII. SEC. 1. Signatures Required.—All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof shall be signed by the President, a Vice-President, a Resident Vice-President or Attorney-in-Fact, and except when signed by an Attorney-in-Fact shall have the seal of the Company affixed thereto, duly attested by the Secretary, an Assistant Secretary or Resident Assistant Secretary. All Vice-Presidents and Resident Vice-Presidents shall each have authority to sign such instruments, whether the President be absent or incapacitated or not; and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent, or incapacitated or not. All such instruments executed as herein provided shall be as binding upon the Company as if the same were signed by the President and duly sealed and attested by the Secretary."

STATE OF NEW YORK,
County of New York, ss:

I, Wm. A. Thompson Assistant Secretary of the National Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom and of the whole of Article XIII, Section 1 of said original By-Law.

Given under my hand and the seal of the Company, in the County of New York, this 3rd day of May, 1910.

[SEAL.] WM. A. THOMPSON,
Assistant Secretary.

45 (Endorsed:) Supreme Court. The People, etc., ex rel. Amoskeag Savings Bank, against Lawson Purdy and others, as Commissioners of Taxes, etc. Bond for costs. George Richards, Attorney for Relator, 141 Broadway, Manhattan, New York City.

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The within bond is satisfactory as to amount and execution.

ARCHIBALD R. WATSON,
Corporation Counsel, Attorney for Defendants.

The within bond is approved.
Dated, May 14, 1910.

EDGAR M. CULLEN,
Chief Judge of the Court of Appeals,
of the State of New York.

Filed May 17, 1910.

M. J. D.

46 Supreme Court of the State of New York.

Assignment and Prayer.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of the Amoskeag Savings Bank of Manchester, New Hampshire, Relator,

against

LAWSON PURDY, President, and CHARLES J. McCORMACK, JAMES H. Tully, Charles Putzel, and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York, Defendants.

Assignment of Errors.

Now comes the above-named Relator and files herewith its Petition for a Writ of Error from the decision and judgment of the Supreme Court of the State of New York upon remittitur from the Court of Appeals of the State of New York to the Supreme Court of the United States and says that there are errors in the records and proceedings of the above-entitled case and for the purpose of having the same reviewed in the U. S. Supreme Court makes the following assignment:

The Court of Appeals of the State of New York and the Supreme Court of the State of New York in making the Order and judgment of the Court of Appeals the judgment of the Supreme Court erred in holding and deciding that that part of the tax law of the State of New York, contained in Section 24 of Chapter 908 of the Session Laws of the State of New York for 1896 as amended by Chapter 739 of the Laws of 1907, which prescribes that the owners of stock in National Banks shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners is not contrary to the restrictions contained in Section
47 5219 of the United States Revised Statutes and that the assessments of the Relator upon its shares in National Banks made by the defendants for the Taxes of 1908, without allowing any deduction for the debts of the Relator, were not illegal or void or voidable at the instance of the Relator. The validity of such Statute and of the authority of the defendants exercised under said Statute

in making said assessments were denied and drawn in question by the Relator on the ground of their being repugnant to the said Section of the U. S. Revised Statutes and in contravention thereof.

The said errors are more particularly set forth as follows:

The Court of Appeals and the Supreme Court of the State of New York erred in holding and deciding:

First. That the Relator was not entitled to a deduction and allowance upon the valuation for taxation of National Bank shares belonging to it, for the amount of any just debts owing by it on the date as of which such valuation was made.

Second. That the fact that the value of the Relator's property taxable elsewhere and not taxable with the amount of its just debts owing by it on the date as of which such valuation was made, exceeded the value of the gross assets of the Relator did not entitle it to any deduction or allowance from the valuation of its National Bank shares for purposes of taxation.

Third. That the said provision of the Tax Law of the State of New York is not contrary to the restrictions contained in said Section of the U. S. Revised Statutes.

Fourth. That the tax imposed upon the Relator for its shares in National Banks upon the valuation thereof without allowing it a deduction of the amount of its just debts is not taxation at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of New York who are permitted by the Laws of such State to deduct from such capital the sum of all their just debts.

Fifth. That the said assessments of Relator upon its shares in National Banks should not be cancelled by the deduction from the value thereof of the amount of its just debts exceeding in amount the total value of its taxable assets, including such bank shares.

For which errors the Relator, the Amoskeag Savings Bank of Manchester, New Hampshire, prays that the said Order and judgment of the Supreme Court of the State of New York, dated February 25 and March 31, 1910, be reversed and a judgment rendered in favor of the Relator and for costs.

GEORGE RICHARDS,
Attorney for the Amoskeag Savings Bank of Manchester, New Hampshire.

[Endorsed:] Supreme Court of the State of New York. The People of the State of New York, ex rel. Amoskeag Savings Bank, Relator, against Lawson Purdy and others, as Commissioners, etc., Defendants. Assignment of Errors and prayer for reversal. George Richards, Attorney for Relator, 141 Broadway, Manhattan, New York City. Read on application May 14, 1910. Edgar M. Cullen, Chief Judge.

49 Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of the Amoskeag Savings Bank of Manchester, New Hampshire, Relator,

against

LAWSON PURDY, President, and CHARLES J. McCORMACK, JAMES H. Tully, Charles Putzel, and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York, Defendants.

Petition for Writ of Error.

The Court of Appeals of the State of New York having on the 22nd day of February, 1910, made an Order in the above-entitled proceeding by which it affirmed an Order of the Appellate Division of the Supreme Court, made on the 5th day of November, 1909, which affirmed an Order of the Supreme Court made at Special Term on the 22nd day of June, 1909, dismissing the Writ of Certiorari herein, and having remitted its Order to the Supreme Court, to be enforced according to law; and the Supreme Court having on the 25th day of February, 1910, made a final Order, making the Order and judgment of the Court of Appeals the Order and judgment of said Supreme Court, which Order was entered in the office of the Clerk of the County of New York on the 25th day of February, 1910; and a judgment of affirmance and for costs having thereupon been entered in said Clerk's office on March 31, 1910; and Frank Raymond, one of the original defendants, having died during the pendency of this case; and the Relator considering itself aggrieved by the final decision of this cause by the Court of Appeals and by the Supreme Court in rendering such judgment, the Relator

50 hereby prays for a Writ of Error from the said decision and judgment of the Supreme Court of the State of New York to the Supreme Court of the United States and for an Order fixing the amount of a bond for costs.

Assignment of errors herewith.

Dated, May 14, 1910.

GEORGE RICHARDS,
Attorney for Amoskeag Savings Bank of Manchester, New Hampshire, Relator.

111 Broadway, Manhattan, New York City.

STATE OF NEW YORK,
Court of Appeals, ss:

Let the Writ of Error issue upon the execution of a bond by the Amoskeag Savings Bank of Manchester, New Hampshire, to Lawson Purdy, Charles J. McCormack, James H. Tully, Charles Putzel and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York in the sum of Five hundred Dollars.

Dated, May 14, 1910.

EDGAR M. CULLEN,
Chief Judge of the Court of Appeals of the State of New York.

[Endorsed:] Supreme Court of the State of New York. The People of the State of New York, ex rel. Amoskeag Savings Bank, Relator, against Lawson Purdy and others, as Commissioners, etc., Defendants. Petition for writ of error. George Richards, Attorney for Relator, 141 Broadway, Manhattan, New York City.

51 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Lawson Purdy, Charles J. McCormack, James H. Tully, Charles Putzel, and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a Writ of Error filed in the office of the Clerk of the County of New York wherein the Amoskeag Savings Bank of Manchester, New Hampshire, the Relator in a proceeding brought in the name of The People of the State of New York, is the plaintiff in error and you are the defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Judge of the Court of Appeals of the State of New York, this 11th day of May, 1910.

EDGAR M. CULLEN,
Chief Judge of the Court of Appeals of the State of New York.

Attest:

[Seal State of New York Court of Appeals.]

R. M. BARBER,
Clerk of the Court of Appeals.

CORPORATION COUNSEL'S OFFICE,
HALL OF RECORDS, BOROUGH OF MANHATTAN,
CITY OF NEW YORK, *May 16th*, 1910.

I, Theodore Connoly, Acting Corporation Counsel of the City of New York, attorney of record acting for the Defendants in Error in the above-entitled case, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of the United States.

THEODORE CONNOLY,
Acting Corporation Counsel, Attorney for Defendants in Error.

[Endorsed:] Supreme Court of the State of New York. The People of the State of New York, ex rel. Amoskeag Savings Bank, Relator, against Lawson Purdy and others, as Commissioners, etc., Defendants. Citation. George Richards, Attorney for Relator, 141 Broadway, Manhattan, New York City.

The President of the United States to the Honorable Judges of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of New York on the relation of the Amoskeag Savings Bank of Manchester, New Hampshire, and Lawson Purdy, President and Charles J. McCormack, James H. Tully, Charles Putzel and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Amoskeag Savings Bank, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly

53 you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of May, in the year of our Lord one thousand nine hundred and ten.

[Seal of the Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States
for the Southern District of New York.

Allowed May 14, 1910.

EDGAR M. CULLEN,
Chief Judge of the Court of Appeals
of the State of New York.

Received May 17, 1910.

WM. F. SCHNEIDER, *Clerk.*

M. P. H.

[Endorsed:] Supreme Court of the State of New York. The People of the State of New York ex rel. Amoskeag Savings Bank, Relator, against Lawson Purdy and others, as Commissioners, etc., Defendants. Writ of error. George Richards, Attorney for Relator, 141 Broadway, Manhattan, New York City.

54 STATE OF NEW YORK,
County of New York, ss:

Clerk's Office of the Supreme Court of the State of New York for the County of New York.

I, William F. Schneider, Clerk of the County of New York and of the Supreme Court of the State of New York for the said County of New York, by virtue of the annexed Writ of Error which was served upon me on the 17th day of May, 1910, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 45 inclusive contain a true and complete transcript of the record and proceedings had in said Court in the suit of The People of the State of New York, on the relation of the Amoskeag Savings Bank of Manchester, New Hampshire, against Lawson Purdy and others, as Commissioners of Taxes, etc., mentioned in said Writ of Error, as the same remain of record and on file in my office and that no opinion was filed in this case; and that annexed hereto is the Petition for the said Writ of Error, the Assignment of Errors and Prayer for Reversal, the Citation to the Defendants in error with admission of service of the same and said Writ of Error served upon me.

M. J. D.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed and have hereunto set my hand, at my office in the City and County of New York, the 18th day of May, 1910.

[Seal New York.]

WM. F. SCHNEIDER, *Clerk.*

[Endorsed:] Supreme Court of the United States. The People of the State of New York, ex rel. Amoskeag Savings Bank, Plaintiff in error, against Lawson Purdy, and others as Commissioners of Taxes, etc., Defendants in error. Return to writ of error. William F. Schneider, Clerk of the Supreme Court, County of New York.

Endorsed on cover: File No. 22,187. New York Supreme Court. Term No. 293. The People of the State of New York on the Relation of The Amoskeag Savings Bank of Manchester, New Hampshire, plaintiff in error, vs. Lawson Purdy, Charles J. McCormack, James H. Tully, Charles Putzel, and Hugh Hastings, as Commissioners of Taxes and Assessments of the City of New York. Filed May 19th, 1910. File No. 22,187.

Office Supreme Court, U. S.
FILED.
SEP 26 1912
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 6

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the AMOSKEAG SAVINGS BANK OF MANCHESTER, NEW HAMPSHIRE,

Plaintiff in Error,

vs.

LAWSON PURDY, CHARLES J. McCORMACK, JAMES H. TULLY, CHARLES PUTZEL and HUGH HASTINGS, as Commissioners of Taxes and Assessments of the City of New York.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

MAXWELL EVARTS,
GEORGE RICHARDS,
Of Counsel for Plaintiff in Error.

C. G. BURGOYNE, 72 to 78 Spring Street, New York.

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OCTOBER TERM, 1912.

No. 58.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the Amoskeag Savings Bank of Manchester, New Hampshire,

Plaintiff-in-Error,

v.

LAWSON PURDY, CHARLES J. MCCORMACK, JAMES H. TULLY, CHARLES PUTZEL, and HUGH HASTINGS, as Commissioners of Taxes and Assessments of the City of New York.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

Statement.

The Amoskeag Savings Bank is a New Hampshire corporation authorized and em-

powered to transact the business of banking and doing business in that State. On the first day of June 1908, it was the owner of 100 shares of stock of the American Exchange National Bank, and 60 shares of stock of the Chemical National Bank, both of which companies were organized as national banking associations under the act of Congress of 1864 (13 U. S. Stat., p. 99), and were located in the City of New York (Record, p. 16).

The Commissioners of Taxes and Assessments of the City of New York assessed against the Amoskeag Savings Bank its shares of bank stock for purposes of taxation for the year 1908 at a taxable value per share of $198.26 on the shares of the American Exchange National Bank and of $281.84 on the shares of the Chemical National Bank, making the assessments $19,800 upon the shares of the American Exchange National Bank and $16,920 upon the shares of the Chemical National Bank. The taxable value per share was obtained by the Commissioners of Taxes and Assessments of the City of New York in accordance with the provisions of the Tax Law of the State of New York by adding together the capital, surplus and undivided profits of each

bank and dividing this amount by the number of its outstanding shares (Record, pp. 16, 17).

The Amoskeag Savings Bank owed on June 1, 1908, just debts exceeding the value of its gross taxable personal estate including the shares owned by it in the American Exchange National Bank and in the Chemical National Bank, and the Amoskeag Savings Bank at the proper time and place prescribed by law for presenting objections made application to the Commissioners of Taxes and Assessments of the City of New York for the correction and cancellation of the assessments against the shares of bank stock above referred to, upon the ground that the Amoskeag Savings Bank was entitled to have its indebtedness deducted from the assessed valuation of its bank shares. The application was denied upon the ground that the law of New York did not permit the Amoskeag Savings Bank to make any deduction from the taxable value of bank shares owned by it on account of its indebtedness (Record, p. 17).

A proceeding of *certiorari* was thereupon brought under the provisions of section 906 of the Greater New York Charter to review the determination of the Commissioners of Taxes and Assessments of the City of New York in assess-

ing for taxation for the year 1908 the shares of stock owned by the Amoskeag Savings Bank in the American Exchange National Bank and the Chemical National Bank. It was claimed by the Savings Bank that the assessment of its shares in the American Exchange National Bank and the Chemical National Bank was in violation of section 5219 of the United States Revised Statutes because made without allowing any deduction for the just debts of the Savings Bank as in the case of other moneyed capital in the hands of individual citizens of the State of New York, and that inasmuch as the just debts of the Savings Bank exceeded the amount of the assessment the latter should therefore be cancelled.

The writ of *certiorari* was dismissed at Special Term of the Supreme Court of New York. An appeal was taken to the Appellate Division of the Supreme Court in the First Department and the order of the Special Term was affirmed (Record, p. 18).

No opinion was written by the Appellate Division. The order below was simply affirmed on the authority of the case of *People ex rel. Bridgeport Savings Bank v. Feitner*, 191 N. Y., 88.

From this order of the Appellate Division of the Supreme Court an appeal was taken to the

New York Court of Appeals, which affirmed the order of the Appellate Division on the authority of its prior decision in the *Bridgeport Savings Bank case* (191 N. Y., 88), and the case has been brought here by writ of error under the provisions of section 709 of the United States Revised Statutes, upon the ground that the assessment by the Commissioners of Taxes and Assessments of the City of New York of the National Bank shares owned by the Amoskeag Savings Bank is in violation of the provisions of section 5219 of the United States Revised Statutes.

Specifications of Error.

The Supreme Court of the State of New York, erred:

(1) In not holding that the provision of section 24 of the Tax Law of the State of New York, that "owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners" was contrary to the restriction contained in section 5219 of the United States Revised Statutes that the shares in a National

Bank "shall not be taxed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens" of the State of New York.

(2) In not holding that the refusal to permit the Amoskeag Savings Bank to deduct its just debts from the value of the National Bank stock held by it in arriving at an assessment of such shares for purposes of taxation while the holder of all moneyed capital other than bank stocks was permitted to make such deduction of his just debts therefrom, resulted in a greater tax on said shares of National Bank stock than is assessed upon other moneyed capital in the hands of individual citizens of the State of New York in violation of Section 5219 of the United States Revised Statutes.

(3) In not holding that the provision of subdivision four of section 21 of the New York Tax Law permitting all persons whether individuals or corporations to deduct their just debts from their taxable personal property, and the provision of section 24 of the New York Tax Law providing that owners of bank stock were not entitled to any deduction from the taxable value of their stock because of their personal indebtedness resulted in a discrimina-

tion against the holders of bank stock in violation of the provisions of section 5219 of the United States Revised Statutes to the effect that the taxation of bank stocks should not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of New York.

FIRST POINT.

No State tax can be assessed against the owners of shares in a National Bank which is at a greater rate than the tax imposed upon other moneyed capital in the hands of individual citizens.

The only power which a State has to tax the shares of a National Bank is that conferred upon it by Congress. In the act giving to the State this power of taxation,—which is now incorporated in section 5219 of the United States Revised Statutes,—Congress was careful to provide that the desirability as an investment of National Bank stock as compared with other moneyed capital should not be diminished or affected in any way by State taxation. It therefore placed

upon such power of State taxation the restriction which is now before this Court for construction, which is,

> " that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens."

(Section 5219 is printed in full at page 1 of the Appendix to this brief).

The provisions of the law of New York which are of importance in this controversy are the fourth subdivision of section 21. This section has to do with the preparation of the assessment roll and in its fourth subdivision directs that the Assessors shall set down—

> " in the fourth column [of the assessment roll] the full value of all the taxable personal property owned by each person respectively *after deducting the just debts owing by him* " (N. Y. Tax Law, 5 Birdseye's Cumming & Gilbert's Laws of New York, p. 5843).

The provision just cited applies equally to corporations and individuals (*Cornell SS. Co. v. Dietrich*, 161 N. Y., 195).

Section 24 of the New York Tax Law provides for the taxation of bank stocks. This

section is set forth in full at p. 11. of the Appendix to this brief. The material parts thereof, so far as this case is concerned, are as follows:

> "In assessing the shares of stock of banks or banking associations organized under the authority of this State or the United States the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State. * * *
>
> "The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value thereof as ascertained and fixed in the manner hereinbefore provided and the owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners or for any other reason whatsoever."

It is to be noted that the rate of the tax is one per cent of the value of the stock. The general tax rate of the City of New York for the year 1908 on personal property, not including bank shares, was 1.61407 per centum (Record, p. 17).

It is, of course, obvious that an investment

from which the holder cannot deduct for purposes of taxation his just debts is not as desirable as one from which he can. All persons in the City of New York who are owners of property other than bank stock are permitted to deduct from the value of their property their just debts. The Amoskeag Savings Bank, the debts of which far exceeded the value of its shares of National Bank stock, was not permitted to make such deduction.

It was therefore discriminated against and the National Bank stocks held by it became by reason of the Tax Law of the State of New York an undesirable investment as compared with other moneyed capital.

The question of interest here is not as to the rate of taxation, but what under the system of taxation devised is the tax which is ultimately imposed. If the final result is that bank stock in the hands of owners who are indebted pays under the scheme of taxation a greater tax than other moneyed capital in the hands of individuals, because deduction of indebtedness is not permitted as to bank stock and is as to all other property, then that which Congress tried to prevent is brought about and bank stock becomes an undesirable investment.

The precise question presented in this case is, whether it is a violation of section 5219 of the United States Revised Statutes for the Commissioners of Taxes to refuse to permit the Amoskeag Savings Bank to deduct from the value of its National Bank stock its just debts when the owner of other moneyed capital is allowed to do so.

This precise question was presented to this Court in the case of *People v. Weaver* (100 U. S., 539). The statute of New York then under consideration was substantially the same as the act in the case at bar. The relator in the *Weaver case* claimed the right to deduct his just debts from the value of the National Bank stock owned by him. The Board of Assessors refused to permit him to make this deduction. The courts of New York sustained the Board of Assessors on the strength of a decision of the Court of Appeals in the case of *People v. Dolan* (36 N. Y., 59). After a full discussion of the question this Court held that the statute of New York as construed by the Court of Appeals of that State was contrary to the restrictions contained in section 5219 of the United States Revised Statutes. In the course of the opinion

of this Court, Mr. Justice MILLER said at page 542:

> "It cannot be disputed,—it is not disputed here,—nor is it denied in the opinion of the State court, that the effect of the State law is to permit a citizen of New York, who has money capital invested otherwise than in banks, to deduct from that capital the sum of all his debts, leaving the remainder alone subject to taxation, while he whose money is invested in shares of bank stocks can make no such deduction. Nor, inasmuch as nearly all the banks in that State and in all others are national banks, can it be denied that the owner of such shares who owes debts is subjected to a heavier tax on account of those shares than the owner of moneyed capital otherwise invested, who also is in debt, because the latter can diminish the amount of his tax by the amount of his indebtedness, while the former cannot. That this works a discrimination against the national bank shares as subjects of taxation, unfavorable to the owners of such shares, is also free from doubt. The question we are called to decide is, whether Congress, in passing the act which subjected these shares to taxation by the State, intended, by the very clause which

was designed to prevent discrimination between national bank shares and other moneyed capital, to authorize such a result. * * *

"As Congress was conferring a power on the States which they would not otherwise have had, to tax these shares, it undertook to impose a restriction on the exercise of that power manifestly designed to prevent taxation which should discriminate against this class of property as compared with other moneyed capital. In permitting the States to tax these shares it was foreseen—the cases we have cited from our former decisions showed too clearly—that the State authorities might be disposed to tax the capital invested in these banks oppressively. * * *

"We are, therefore, of opinion that the statute of New York, as construed by the Court of Appeals, in refusing to plaintiff the same deduction for debts due by him, from the valuation of his shares of national bank stock, that it allows to those who have moneyed capital otherwise invested, is in conflict with the Act of Congress, and the judgment of that court will be reversed and the case remanded for further proceedings in conformity to this opinion."

An examination of the *Dolan case* (36 N. Y., 59), which was the basis of the decision of the Court of Appeals in the *Weaver case*, shows that the argument of the Court of Appeals was substantially the same then as in the case at bar. The present case is also similar to the *Weaver case* in that no opinion was written in this case, but it was decided on the strength of the case of *People ex rel. Bridgeport Savings Bank v. Feitner* (191 N. Y., 88). The opinion of the Court of Appeals in the *Bridgeport Savings Bank case* is printed in full at page IX of the Appendix to this brief.

It therefore appears that the *Weaver case* and the case at bar are on all fours upon all material points. Substantially the same question is presented in both cases and it would therefore seem clear that the *Weaver case* is a controlling authority upon the question now presented to this Court. It has never been reversed or doubted in any subsequent decision of this Court and is today the law as applicable to the facts now before this Court. The facts in the *Bridgeport Savings Bank case* are conceded by the Supreme Court of New York to be the same as in the *Weaver case*. "*The facts are the same as in the case at bar*" (Appendix, page XXXIV). It was

only upon the erroneous assumption that this Court had subsequently receded from its position in the *Weaver case* that the New York Court found a way to escape its application. "*Were that decision the only one upon this question, it would be conclusive upon me in this proceeding*, but the question did not seem to be settled by it" (Appendix, page XXXV.).

Similar questions to that involved in the *Weaver case* were before this Court many times as appears by the following cases:

Pelton v. National Bank, 101 U. S., 143, 145.

Supervisors v. Stanley, 105 U. S., 305, 311.

Hills v. Exchange Bank, 105 U. S., 319.

Evansville Bank v. Britton, 105 U. S., 322, 324.

In the case of *Boyer v. Boyer* (113 U. S., 689) certain rules were deduced from the prior decisions of this Court for the construction of section 5219 of the Revised Statutes of the United States, and among them is this rule found at page 695:

> "That a State law which permits individual citizens to deduct their just debts

> from the valuation of their personal property of every kind, other than national bank shares, * * * leaving the remainder to be taxed, while it denies the same right to deduction from the cash value of bank shares, operates to tax the latter at a greater rate than other moneyed capital."

It is to be noticed that the *Weaver case* was decided at October Term, 1879, that the *Boyer case* was decided five years later, that during that period this Court had before it many cases covering this question of the construction of section 5219 of the United States Revised Statutes, and that after five years of discussion and consideration of this question it formulated the rule which we have just quoted. This rule has never been questioned in any way whatever in any of the subsequent decisions of this Court.

Curiously enough the decision of the New York Court of Appeals in the *Bridgeport Savings Bank case* which was the basis of the decision of the Court of Appeals in this case makes no mention whatever of the *Weaver case* or of any decision of this Court in regard to the right of a holder of national bank stock to deduct from the value thereof his just debts for the purposes of taxation.

In the *Bridgeport Savings Bank case*, the New York Court of Appeals says that it cannot see that a greater tax is collected from National Bank shares generally by a flat rate of one per cent upon valuations that are arrived at without any deduction for debts of the owners than would be collected by the general tax rate upon valuations based upon the allowance of deductions for the debts of owners and that there is, therefore, no inequality in the effect upon the stockholders generally. Whether this be so or not is a matter of pure speculation. No one can tell, for there are and can be no statistics available, as to the amount of other moneyed capital in the hands of individual citizens that is subject to taxation nor what is the amount of the indebtedness of such individual citizens that the law allows them to deduct from the value of their capital for purposes of assessment. Without knowing both it is impossible to calculate whether more or less than one per cent of the total capital is collected as a tax by assessing the capital at its valuation after deducting indebtedness and collecting a tax on the residue at the general rate. Without some figures or statistics, how may one know what is the effect of any system of assessment "on the average," as compared

with another? The statement of Judge VANN "When all things are considered, the rate, even without the privilege of deducting debts, is not greater than that applied to other moneyed capital in the hands of individual citizens of the State" is based on no facts of experience or investigation and is pure surmise.

Congress has tried to prevent the owner of National Bank shares from being discriminated against by State taxation; it has been more specific and prescribed the means by which that shall be prevented. Doubtless Congress could have chosen some other safeguard that might be sufficient, but that is apart from the question and the inquiry must be confined to whether the State Act under review complies with the restriction that Congress did see fit to prescribe. It is not the intention with which the New York Legislature adopted this law that must be examined, but whether what it did violates the Federal restriction. For instance the Legislature of New York might pass a law conferring certain privileges or exemptions upon the owners of National Bank shares such as the preferential right to subscribe for State bonds at par, that would set a premium upon such ownership over that of other moneyed

capital. This might actually off-set the disadvantage of taxing the owners of such shares at a greater rate than that assessed on other moneyed capital and make bank shares more desirable generally and more valuable. It might be evidence of a discriminating regard for shareholders of National Banks by the State Legislature. But the tax at a greater rate than that assessed on other moneyed capital would be none the less in violation of the Federal restriction and beyond the power of the State Legislature to impose.

It is something very like this that is urged by the New York Courts in justification of the State Act under review. They say that while it is true that the plaintiff-in-error and other owners or would-be owners of National Bank shares who have debts, are discriminated against and taxed at a greater rate than that imposed on other moneyed capital in the hands of individual citizens, yet the New York Legislature has conferred the privilege upon such owners and would-be owners of shares, as have no debts, of paying a tax at a flat rate less than the general rate and that shows that no discrimination is intended or, perhaps, accomplished. Such an argument, logically pursued, would sustain a law that taxed

non-resident owners at a greater rate than that assessed on other moneyed capital but exempted resident owners from all taxation on their shares. The effect of such an Act might be to put a premium on National Bank shares and in its effect on the stockholders generally, might impose an average tax less than would be collected if all owners were assessed at the rate assessed on other moneyed capital. But would anyone claim that this was a compliance with the Act of Congress or doubt that a non-resident owner would be relieved of an assessment made upon his shares at a greater rate than that imposed on other moneyed capital?

The moment that the test prescribed by Congress, as explained and applied by this Court in the *Weaver Case*, of whether the individual owner who is allowed to be taxed by the Federal Act has been taxed at a greater rate than that imposed upon other moneyed capital, is departed from and consideration given to the effect of an Act upon the stockholders generally, we enter upon the domain of uncertainty and speculation and make possible the substitution of unauthorized tests for the simple one prescribed by Congress. We respectfully submit that the Federal Act is plain and unmistakable in its phraseology

and no substitute for a compliance with its terms is permissible. Special advantages to certain of the shareholders in taxing them at a lower rate than they might have to pay under the general system of taxation, cannot make the taxation of the shares "of the owner or holder of such shares" "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens" anything different from a distinct violation of the express Federal provision.

In the course of the opinion in the *Bridgeport Bank case*, Judge VANN says, at page 96:

> "If any bank is located in a tax district where the rate is less than one per centum, though we fear there is none so fortunate, its stockholders will be entitled to a reduction to conform thereto, for the Tax Law expressly provides that 'in assessing the shares of stock of banks or banking associations organized under the authority of this State or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other monied capital in the hands of individual citizens of this State.'"

Suppose that the rate on bank shares should be reduced below one per centum to conform to

some local tax-rate, how would that furnish any compliance with the Federal restriction? It would result simply in bank shares and other moneyed capital being all taxed at a uniform tax-rate, no allowance for debts to the shareholders and a deduction of indebtedness to holders of other moneyed capital, the precise situation presented in the *Weaver case* and condemned by this Court.

This citation from Judge VANN'S opinion and comment thereon are made to illustrate with what inattention to the principles of the *Weaver case* the New York Court of Appeals treated this question in the *Bridgeport Savings Bank case*.

It is true that there are some cases in this Court with reference to the construction of what is meant by the words "moneyed capital" used in section 5219 of the United States Revised Statutes, but the definition of "moneyed capital" has nothing to do with the right to deduct debts by the owner of bank stock when such right is given by the statutes of New York to the owner of every other kind of property.

Some reliance may be placed by counsel for the Tax Commissioners upon the case of *Mercantile Bank v. New York* (121 U. S., 138), but it is not possible to claim that this decision

in any way affected the previous decision of this Court in the *Weaver case* (100 U. S., 539), in which it held that the holders of shares of national bank stock were entitled to deduct from the value thereof the amount of their debts. It was especially stipulated in the *Mercantile Bank case* that from the gross valuation of the shares of the national bank stock involved there had been deducted—

> "the debts of sundry indebted stockholders amounting to $89,128 * * * as by law allowed" (page 141).

In other words, the very thing which the Amoskeag Savings Bank now claims it should be permitted to do was done in the *Mercantile Bank case* and it was assumed in that case as settled law that the owners of national bank stock were entitled to deduct from the value thereof their just debts in order to arrive at a proper assessment of their national bank stock for purposes of taxation.

It is to be noticed that the *Mercantile Bank case* was decided in October Term, 1886, just two years after the *Boyer case* (*supra*), which formulated again the rule declared in the *Weaver case*, and that the *Weaver case* was referred to by Mr. Justice MATTHEWS in his decision in

the *Mercantile Bank case* without questioning it in any way. It would certainly seem strange if this Court intended to overrule the *Weaver case* and the many subsequent decisions in line therewith, in a case in which the same question did not arise. If it had so intended, surely such intention would have been expressed in clear and unmistakable terms.

At the same time that the *Mercantile Bank case* was argued a similar case from New Jersey was before this Court. It is the case of *Newark Banking Co. v. Newark*, 121 U. S., 163, and is decided on the authority of the *Mercantile Bank case*. It is important here only because it shows that in the New Jersey case it also appears that the bank stock there involved was "*subject to deduction on account of debts due by the owner*" (p. 164).

We refer to these two cases in 121 U. S., simply to make it clear that in both of them it was assumed to be the law that wherever individuals were permitted to deduct debts from "moneyed capital" other than bank stock they were permitted to make a similar deduction from the value of their bank stock. The principal question in these two cases of the *Mercantile Bank* and the *Newark Banking Company* was as to

the meaning of the words "other moneyed capital," and it was held that it included—

> "money in the hands of individuals employed in a similar way invested in loans, or in securities for the payment of money either as an investment of a permanent character or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property" (121 U. S., p. 157).

It is perfectly obvious that this definition had nothing whatever to do with the question of the right of deduction for purposes of taxation of just debts from the value of national bank stock.

In the course of his opinion in the *Mercantile Bank case*, at page 155, Mr. Justice MATTHEWS clearly gives the reason upon which the principle now insisted on is based for he says:

> "A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state

laws were exempt from an equal burden. The main purpose, therefore, of Congress in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

It is very clear from the decision of this Court in *Whitbeck v. Mercantile Bank* (127 U. S., 193) decided at October Term 1887, one year after the decision in the *Mercantile Bank Case* (121 U. S., 138) that this Court did not consider that the principle of the *Weaver case* (100 U. S., 539) had been limited or affected by the *Mercantile Bank case* (121 U. S., 138). In the *Whitbeck case* the syllabus is as follows:

"The statutes of Ohio regulating assessments for taxation allow an owner of moneyed capital other than shares in a national bank to have a deduction equal to his *bona fide* indebtedness made from the amount of the assessment of the value of such moneyed capital; but they make no

provision for a similar deduction from the assessed value of shares in a national bank, and provide no means by which such a deduction may be obtained. Held:

(1) *That the owners of such shares are entitled to have a deduction of their indebtedness made from its assessed value as in the case of other moneyed capital.*"

It is true that subsequently, and in the case of *National Bank of Wellington v. Chapman* (173 U. S., 205, 220), this Court held that the assumption of the court in the *Whitbeck case* as to the law of Ohio was wrong. This Court in the *Chapman case* did not however undertake to overrule the principle or doctrine of the *Whitbeck case*, but simply said that the court was not right in its assumption as to the Ohio law.

It is of interest to notice that in *Palmer v. McMahon* (133 U. S., 660), Chief Justice FULLER at pages 666–7, in speaking about the *Weaver case*, said:

"We have decided * * * that under acts permitting the deduction of debts from the value of all a person's taxable property, such deduction must be permitted from the value of such [national bank] shares. *People v. Weaver*, 100 U. S., 539, 546."

This reference to the *Weaver case* is on the same page with a discussion of the *Mercantile Bank case* (121 U. S., 138) which would seem to indicate that this Court regards and has always regarded the *Weaver case* as the law to be applied to the facts which are found in the case at bar.

In the case of *People's National Bank v. Marye*, 191 U. S., 272, this Court, in an opinion delivered by Mr. Justice PECKHAM, recognized the principle that shareholders in a national bank should be permitted to deduct the amount of their indebtedness from the value of their bank stock when, by the laws of the State where the national bank is located, the holders of other moneyed capital are allowed to make such deduction.

It needs no elaborate argument to show that shares in a national bank would be diminished in "value as an investment" (*Mercantile Bank case*) if the holder could not deduct from the value thereof his just debts leaving the balance for purposes of taxation. It is of course true that the rate of one per cent on the stock of national banks is less than the general rate of taxation which by the stipulation of facts appears in this case to be 1.61407

per cent, but this Court in the *Weaver case* and in subsequent cases in line therewith has looked at the substance of the transaction and has said that an equal or a less rate on national bank shares did not comply with the statute if this rate was imposed upon unequal valuations. If a man owing money owns $1,000 of moneyed capital other than bank stock and is assessed thereon at the rate of two per cent, but is allowed to deduct therefrom his just debts leaving no property at all upon which any tax can be assessed he has of course a more desirable investment than if he had put his money in national bank stock upon which the rate of taxation is one per cent, but from the value of which he is not permitted to deduct his just debts.

The entire argument of this Court in the *Weaver case* is based on the proposition that when Congress surrendered to the State the right to tax shares in national banks it did so with the intention that such taxation should not in any way impair the desirability of bank stocks as an investment, and the soundness of the proposition that the ordinary man would prefer an investment in moneyed capital from which he could deduct his debts, when it came to the question of taxation, to an investment at pos-

sibly a lower rate, from which no deduction could be made, has never been questioned by this Court.

None of the cases decided by this Court subsequent to the *Mercantile Bank case* affect in any respect the decision or the reasoning of the decision in the *Weaver case*. All of them enforce the definition of "moneyed capital" as given in the *Mercantile Bank case* and none of them undertake to qualify or limit the broad ground of the *Weaver case* that the value of National Bank stock as an investment is diminished by any law of the State where the bank is located which permits an owner of moneyed capital other than bank stock to deduct his debts therefrom for assessment and taxation, but does not allow the owner of shares in a national bank to make a similar deduction, and that therefore any such State law is in violation of the restriction of the right of taxation by a State, of shares in a national bank conferred by section 5219 of the United States Revised Statutes. The substance and purpose of the Act of Congress (Section 5219, U. S. Revised Statutes) was to so limit the taxation by the State, that the desirability of national bank shares as an investment should not be affected thereby.

The form and manner of such taxation was of no concern. That is expressly left to the State. The question is what was the tax that the national bank stock had to pay? Was it greater than that which other moneyed capital paid by reason of an unequal basis of valuation for assessment purposes? If so, then it was immaterial that the rate might be less. The matter of concern was the tax, not how it was arrived at. If because he could not reduce his assessment by the amount of his debts the tax of the holder of national bank stock was greater than the tax of the holder of "moneyed capital" other than bank stock then such a condition is prohibited by the spirit and purpose and letter of section 5219 of the United States Revised Statutes.

This is the decision of this Court in the *Weaver case* unlimited and unqualified by any subsequent decision and as the facts in the case at bar are identical and are conceded by the New York courts to be identical (Appendix, page XXXIV) in every material respect with the *Weaver case* we submit that the Amoskeag Savings Bank has the right to deduct its debts from the value of the bank stock owned by it in national banks located in New York.

The question is not whether the New York Statute complained of may not possibly in certain instances be applied without unjust discrimination, as for example where the owner of national bank stock has no indebtedness, or but a trifling amount of indebtedness. We have to do with this plaintiff in error and with the incidence of the tax falling upon it, as disclosed by this record. If this plaintiff in error had been allowed to deduct its just indebtedness, it must have been altogether relieved from the tax, as is admitted on the record. For aught that appears, other savings banks and all other owners holding New York national bank stock and owing debts, with the aid of a similar right of deduction must have been similarly relieved, as in the case of attempted taxation upon their other moneyed capital.

By this scheme of taxation then, these important classes of investors are debarred or deterred from investing in national bank stock; and, as to them at least, and to this extent, this discriminatory measure cannot be enforced. (*People's National Bank vs. Marye*, 191 U. S., 272).

This Court in the case of *Covington vs. First National Bank* (198 U. S., 100, at page 113), in

an opinion delivered by Mr. Justice DAY, defined the purpose of Section 5219 of the United States Revised Statutes in the following phraseology :

> " It is a limitation upon the right of the State and the State must not discriminate against national banks by the use of methods of taxation differing from those in use in taxing other moneyed capital in the hands of individual citizens."

SECOND POINT.

The judgment of the Supreme Court of the State of New York should be reversed with costs.

MAXWELL EVARTS,
GEORGE RICHARDS,
Of Counsel for Plaintiff in Error.

APPENDIX.

SECTION 5219 OF U. S. REVISED STATUTES.

(5 Fed. Stats. Annot. p. 157.)

SEC. 5219. [*State taxation.*] Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

SECTION 24—NEW YORK TAX LAW.

(5 Birdseye's Cumming & Gilbert's Consolidated Laws of New York, p. 5846).

SEC. 24. *Bank shares, how assessed.—In assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state.* The value of each share of stock of each bank and banking association, except such as are in liquidation, shall be ascertained and fixed by adding together the amount of the capital stock, surplus and undivided profits of such bank or banking association and by dividing the result by the number of outstanding shares of such bank or banking association. The value of each share of stock in each bank or banking association in liquidation shall be ascertained and fixed by dividing the actual assets of such bank or banking association by the number of outstanding shares of such bank or banking association. *The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value*

thereof, as ascertained and fixed in the manner hereinbefore provided, and the owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever. Complaints in relation to the assessments of the shares of stock of banks and banking associations made under the provisions of this article shall be heard and determined as provided in section thirty-seven of this chapter. The said tax shall be in lieu of all other taxes whatsoever for state, county or local purposes upon the said shares of stock, and mortgages, judgments and other choses in action and personal property held or owned by banks or banking associations the value of which enters into the value of said shares of stock shall also be exempt from all other state, county or local taxation. The tax herein imposed shall be levied in the following manner: The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from an inspection of the assessment-rolls in their respective counties, the number of shares of stock of banks and banking associations in each town, city, village, school and other tax district, in their several counties,

for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax. Every bank or banking association so paying the taxes due upon the shares of its stock shall have a lien on the shares of stock, and on all property of the several share owners in its hands, or which may at any time come into its hands, for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner. The tax hereby imposed shall be distributed in the following manner: The board of supervisors of the several counties shall ascertain the tax rate of each of the several town, city, village, school and other tax districts in their counties, respectively, in which the shares of stock of banks and banking associations shall be taxable, which tax rates shall include the proportion of state and county taxes levied in such districts, respectively, for the year for which the tax is imposed, and the proportion of the tax on bank stock to which each of said districts shall be respectively entitled shall be ascertained by taking such proportion of the tax upon the shares of stock of banks and banking associa-

respectively, in which such shares of stock are taxable, the names of the banks issuing the same, respectively, and the assessed value of such shares, as ascertained in the manner provided in this article and entered upon the said assessment-rolls, and shall forthwith mail to the president or cashier of each of said banks or banking associations a statement setting forth the amount of its capital stock, surplus and undivided profits, the number of outstanding shares thereof, the value of each share of stock taxable in said county, as ascertained in the manner herein provided, and the aggregate amount of tax to be collected and paid by such bank and banking association, under the provisions of this article. A certified copy of each of said statements shall be sent to the county treasurer. It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, and in the city of New York to the receiver of taxes thereof on or before the thirty-first day of December in said year; and any bank or banking association failing to pay the said tax as herein provided shall be liable by way of penalty

tions, taxable in such districts, respectively, under the provisions of this chapter as the tax rate of such tax district shall bear to the aggregate tax rates of all the tax districts in which said shares of stock shall be taxable. The clerks of the several cities, villages and school districts to which any portion of the tax on shares of stock of banks and banking associations is to be distributed under this section shall, in writing and under oath, annually report to the board of supervisors of their respective counties, during the first week of the annual session of such board, the tax rate of such city, village and school district for the year prior to the meeting of each such board. The said board of supervisors shall issue their warrant or order to the county treasurer on or before the fifteenth day of December in each year, setting forth the number of shares of bank stock taxable in each town, city, village, school and other tax district in said county, in which said shares of stock shall be taxable, the tax rate of each of said tax districts for said year, the proportion of the tax imposed by this chapter to which each of said tax districts is entitled, under the provisions hereof, and commanding him to collect same, and to pay to the proper officer in each of such districts the proportion of

such tax to which it is entitled under the provisions of this chapter. The said county treasurer shall have the same powers to enforce the collection and payment of said tax as are possessed by the officers now charged by law with the collection of taxes, and the said county treasurer shall be entitled to a commission of one per centum for collecting and paying out said moneys, which commission shall be deducted from the gross amount of said tax before the same is distributed. In issuing their warrants to the collectors of taxes, the board of supervisors shall omit therefrom assessments of and taxes upon the shares of stock of banks and banking associations. *Provided, that*, in the city of New York the statement of the bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city, on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. The tax shall be paid by the respective banks in said city to the said receiver of taxes on or before the thirty-first day of December in said year, and said tax shall be collected by the said receiver of taxes and shall be

by him paid into the treasury of said city to the credit of the general fund thereof. This section is not to be construed as an exemption of the real estate of banks or banking associations from taxation. No shares of stock of such banks and banking associations, by whomsoever held, shall be exempt from the tax hereby imposed.

OPINION OF NEW YORK COURT OF APPEALS IN CASE OF PEOPLE *EX REL.* BRIDGEPORT SAVINGS BANK v. FEITNER (191 N. Y. 88, 92).

VANN, J. No state has power to tax national banks without the consent of Congress, because they are agencies of the Federal government and the power to tax involves the power to destroy (*Owensboro National Bank v. Owensboro, 173 U. S. 664*). Congress gave its consent many years ago through a statute which commits the subject, including by express mention "the manner and place" of taxing all shares of national banks located within a state to the legislature thereof, "subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere." The statute also provides that "nothing herein shall be construed to exempt the real property of associations from either state, county or municipal taxes, to the same extent, according to its value,

as other real property is taxed." (U. S. R. S. Sec. 5219).

The State of New York exercised this power by enacting sections twenty-three and twenty-four of the Tax Law, by which a new and special system of assessment and taxation was created and applied solely to banks, both national and state. The method or "manner" of assessment rests primarily on a report which the chief fiscal officer of every bank is required to make to the assessors of the tax district where the bank is located, on or before the first day of July in each year, stating the amount of its authorized capital stock, the number of shares and the par value thereof, the amount of stock paid in, the amount of the surplus and undivided profits, a complete list of the shareholders and the number of shares held by each. (Tax Law, Sec. 23; L. 1901, ch. 550.)

The rule of assessment and taxation prescribed is that the rate shall be no greater than that imposed upon other moneyed capital in the state, and the rule of valuation is to add together the amount of the capital stock, surplus and undivided profits, and divide the result by the number of shares outstanding. The value of each share is thus ascertained and the rate of

tax prescribed is one per centum on such value, with no right to any deduction from the taxable value of the shares on account of the personal indebtedness of the owner thereof. This tax is in lieu of all other taxes for state, county or local purposes, either on shares or on the personal property of the bank.

The tax is levied by the board of supervisors of the several counties, except the county of New York, on or before the fifteenth day of December in each year by ascertaining through an inspection of the assessment rolls the assessed value of the shares and mailing to the president or cashier of each bank a statement of the amount of its capital stock, surplus and undivided profits, the number of outstanding shares, the value of each share, valued by the assessors according to the rule above prescribed, and the aggregate amount of tax to be paid by such bank. It is made the duty of each bank to collect the tax due upon its shares from the several owners thereof and to pay the same to the county treasurer, or in the city of New York to the receiver of taxes, within fifteen days after the receipt of such statement. (*Id.*, Sec. 24.)

The same section provides that "complaints in relation to the assessments of the shares of

stock of banks and banking associations made under the provisions of this act shall be heard and determined as provided in article two, section thirty-six of the Tax Law." The section closes with the proviso "that in the city of New York the statement of bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city, on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. The tax shall be paid by the respective banks in said city to the said receiver of taxes within fifteen days after the receipt of said statement, and said tax shall be collected by the said receiver of taxes and shall be by him paid into the treasury of said city to the credit of the general fund thereof. This act is not to be construed as an exemption of the real estate of banks or banking associations from taxation."

These are the only sections of the Tax Law that apply especially to the assessment of shares of bank stock. Among other sections that are general in their application is section thirty-five, which provides that the assessors shall complete the assessment roll on or before the first day of

August and at once give notice where it may be seen and examined by any person until the third Tuesday of August next following and that on that day they will meet at a time and place specified in the notice to review their assessments. It further provides that "in any city the notice shall conform to the requirements of the law regulating the time, place and manner of revising assessments in such city."

Section thirty-six provides that "the assessors shall meet at the time and place specified in such notice, and hear and determine all complaints in relation to such assessments brought before them, and for that purpose they may adjourn from time to time." Provision is made for taking testimony and hearing proofs relating to any complaint and the assessment to which it relates, and finally that "the assessors shall, after said examination, fix the value of the property of the complainant and for that purpose may increase or diminish the assessment thereof."

According to the charter of the city of New York (L. 1901, ch. 466) the assessment rolls, containing the "assessed valuations of real and personal property," are to be completed "on or before the second Monday of January in each

year." (Sec. 899.) The books are open to inspection until the first of April and during said interval complaints may be made and errors corrected. (Secs. 892, 895 and 898.) During the months of April and May the commissioners act upon applications, previously made, to diminish the valuation, but their power to make corrections of any kind ceases by the first of June. The clerical work of preparing the revised rolls is finished by the first Monday of July, when the rolls are delivered to the board of alderman and the commissioners no longer have even the custody thereof. (Sec. 907.) The tax rolls are completed and delivered to the receiver of taxes on or before the fifteenth of September with the proper warrant annexed for the collection of the taxes, which are due and payable on the first Monday of October, with a reward for paying before the first of November and a penalty for not paying until after the first of December. (Secs. 914, 915, 916.)

We have little trouble over the claim of the relator that the assessment upon its shares of stock in national banks is unlawful because no deduction of debts was allowed. No unequal burden was cast on national banks or their stockholders, nor any unjust discrimi-

nation made against them by our Tax Law, merely because a different system was adopted in taxing their shares of stock, as well as the shares of stock in state banks, from that applied to other personal property. Congress has expressly committed to the legislature of each state the power of directing and determining the manner and place of taxing all the shares of national banking associations, subject only to the two restrictions named in the section quoted from the Federal act. The rule of valuation prescribed by the state statute is to add the amount of capital stock, surplus and undivided profits together and divide the result by the number of shares outstanding. These data are furnished by the officers of the bank and the application of the rule thereto necessarily leads to the exact value of each share. The assessment, although based on this valuation, is not made, as in other cases, in accordance with the proportion which such valuation bears to the amount necessary to be raised by government, but upon the basis of a flat rate of one per centum, which, in the case before us, was less than one-half the rate at which other property was taxed. The state is not obliged to apply the same system to the taxation of national banks that it uses in the

taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them. We find nothing of this character, either in what was done in the case before us or in what might be done in any case under the Tax Law. The flat rate was more favorable to the relator than the general rate in the city of New York and, so far as appears, elsewhere in the state, and while that may not be conclusive, still a different system was open to use by the state and the system adopted is neither unequal nor unfair, at least as to the national banks. If any bank is located in a tax district where the rate is less than one per centum, though we fear there is none so fortunate, its stockholders will be entitled to a reduction to conform thereto, for the Tax Law expressly provides that "in assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other monied capital in the hands of individual citizens of this state." (L. 1896, ch. 908, Sec. 24, as amended L. 1901, ch. 550.)

It was within the power of the legislature to weigh advantages and disadvantages and to sub-

stitute a low and flat rate of taxation, an advantage which other property does not have, in the place of the deduction of debts, an advantage which other owners of personal property enjoy. If, in order to promote convenience and facilitate collection of taxes on property owned largely by non-residents scattered all over the country, they saw fit to substitute in place of the ordinary rule applicable mainly to residents of the immediate locality, a favorable flat rate with no exemptions for debts, it was in their power to do so, for on the average the new system is more favorable to the owners of bank shares than the general system. When all things are considered, the rate, even without the privilege of deducting debts, is not greater than that applied to other moneyed capital in the hands of individual citizens of the state.

The fact that the special system may not be as favorable as the general system in an isolated case does not create a conflict with the Federal Constitution or statute, for a general statute is a rule of action not for a few but for all the people. The accident that it may bear more heavily upon some persons than upon others, owing to their peculiar situation, does not affect its validity, for that is a feature common to most general

statutes. Where there is no intentional discrimination against national banks and no inequality in the effect upon their stockholders generally, the act is valid, and this, we think, is true of those provisions of the Tax Law under consideration.

The relator, however, contends that the tax in question was imposed without notice or any opportunity to be heard, and that the statute contains no provision for either. If this is true, not only must the tax be set aside but the statute must be adjudged invalid, for it is a principle of our law there can be no taxation without notice and a chance to complain on account of alleged error or mistake. The notice need not be personal, as it may be by general statute which is notice to all, but it must afford a reasonable opportunity to make complaint. It must be of such a character that compliance therewith is possible so that the taxpayer may object or protest, even if he has no just ground for doing either. (*Stuart v. Palmer*, 74 N. Y. 190; *Matter of McPherson*, 104 N. Y. 321; *McLaughlin v. Miller*, 124 N. Y. 517; *Matter of Douglas v. Board of Supervisors Westchester Co.*, 172 N. Y. 314; *People ex rel. Moller v. O'Donnel*, 183 N. Y. 9, 12.)

The statute, however, will not be adjudged to

violate the constitution if by any reasonable construction it can be given a meaning in harmony with that instrument.

"As every presumption is in favor of the statute, if it is open to two constructions, one of which would obey and the other violate the Constitution, the univeral rule of courts is to select the former." (*People ex rel. Simpson v. Wells, 181 N. Y. 252, 257.*)

If the general provisions of the Tax Law relating to a grievance day applied to the assessment and taxation of bank shares, it is obvious that there is no cause for complaint so far as the law itself is concerned, whatever may be said if there was a failure to comply therewith. It is clear that the Tax Law assumes to give a hearing to the holders of shares of bank stock before the assessments upon them become final, for section twenty-four expressly provides that "complaints in relation to the assessments of the shares of stock of banks and banking associations made under the provisions of this act shall be heard and determined as provided in article two, section thirty-six, of the Tax Law." Upon turning to section thirty-six, we find that the assessors are required to meet at the time and place specified in a certain notice and hear and determine all

complaints in relation to such assessments that are brought before them. For the notice mentioned in this section we are referred to section thirty-five, which provides that the assessors shall complete the assessment roll on or before the first day of August. They are also required to post notices that the roll has been completed and that a copy thereof has been left with one of their number at a specified place, where it may be examined by any person until the third Tuesday of August next following, and that on that day they will meet at the time and place named in the notice to review their assessments. If this were all, no question could be seriously raised as to the constitutionality of the statute in the respect now under consideration.

The section, however, further provides that "in any city the notice shall conform to the requirements of the law regulating the time, place and manner of revising assessments in such city." Under the charter of the city of New York ordinary property, both real and personal, but not including bank shares, is assessed as of the second Monday of January and the time prescribed for hearing complaints and revising the assessments by the assessors expires

on the the thiry-first of May. (Secs. 892, 895, Greater New York charter; *People ex rel. Simpson v. Wells*, 181 N. Y., 252.) Under these provisions of the charter it is insisted that the Tax Law is unconstitutional so far as it relates to the taxing of bank shares, because the last grievance day would have passed before the assessment on that kind of property could be imposed, since the return from the bank is not required prior to July first. If these provisions of the charter apply to taxation on bank shares, there can be no answer to this contention, but it seems to us absurd to construe the provisions in section thirty-five concerning notice in cities as applicable to the assessment of bank shares in the city of New York. Such a construction would impute to the legislature the intention of giving a grievance day in form, but withholding it in fact. It is not a question of mere constitutionality. It is an inherent impossibility to review in May an assessment not imposed until after the first of July and this would be equally so even though both State and Federal Constitution expressly authorized it. The provision relied upon by the relator in section thirty-five should be construed as applicable only where it is possible to apply it.

A review of the various charter provisions of the city of New York and the amendments of sections twenty-three and twenty-four of the Tax Law as made in 1901 in relation to the taxing of bank stock shows that the two schemes are absolutely independent. The assessment rolls of real and personal property other than bank stocks are required by the charter to be delivered to the board of aldermen at the annual meeting on the first Monday of July (Sec. 907). On the data required to be furnished by the comptroller of the amount to be raised by taxation, the aldermen proceed to estimate the tax rate to be imposed upon the taxable property of the city and to levy a tax upon each specific piece of property, real or personal. They deliver the tax roll and warrants to the receiver of taxes on or before the fifteenth of September. The taxes are due in November, with a rebate made for payment before that time and a penalty added for a failure to pay during that month. The board of aldermen levies no tax on bank stock, but the commissioners of taxes and assessments certify the amount of tax and the persons taxable to the receiver of taxes on or before the fifteenth of September and the taxes thereon become payable during that month.

Thus it is evident that the scheme of taxing bank shares, not only in respect to the amount but also as to the method and manner of its imposition, stands by itself, independent and separate from that prescribed for the assessment and taxation of other property. It follows, therefore, that the charter provisions do not apply to the taxation of bank stock, but the general law as it appears in sections thirty-five and thirty-six. The assessors are required to complete their assessments before the first day of August, to expose the roll as completed for inspection until the third Tuesday in August, to then meet and hear complaints, pass upon them and revise their assessments accordingly. We regard this construction as reasonable and, hence, according to the rule laid down in *People ex rel. Simpson v. Wells* (*supra*), we adopt it and hold that the statute is valid.

There is a material difference between a case where the statute imposing the tax fails to provide a grievance day and a case where the taxpayer has been deprived of an opportunity to be heard because the assessing officers failed to give him notice as provided by statute. A taxing act, which requires a valuation of property as part of the procedure, is unconstitutional unless it pro-

vides a grievance day, or an adequate opportunity to be heard and any tax levied under such a statute is void. If, however, a grievance day is provided but notice thereof is not given, while the statute is valid, the tax is voidable. The assessors have jurisdiction, but the failure to give notice is an irregularity (*People v. Turner*, 145 N. Y. 451), and the assessment, if attacked in due form and in due time, will be set aside, on account of such irregularity. In the case now before us the statute was valid but the assessing officers failed to comply with it. They gave no notice and refused to hear any complaint, owing doubtless to a misunderstanding of the law. While, therefore, we hold the statute valid, we are compelled, on account of the irregularity in failing to give notice, to reverse the orders of the Appellate Division and of the Special Term and to cancel the assessment against the relator, with costs in all courts.

CULLEN, Ch. J., GRAY, WERNER, WILLARD BARTLETT, HISCOCK and CHASE, JJ., concur.

Ordered accordingly.

The Case of People ex rel. Bridgeport Savings Bank v. Feitner, Was Affirmed by the Appellate Division of the New York Supreme Court, First Department, on the Opinion of the Lower Court, Which Is Quoted in Full in the Appellate Division Reports (120 App. Div. [N. Y.], 838), **and is as follows:**

McCALL, J.:

This proceeding is brought under section 906 of the Greater New York charter to review the determination of the respondents in assessing for taxation for the year 1901 certain shares of stock owned by relator in ten national banks and in one State bank. The legality of such assessment is challenged upon the grounds (1) that chapter 550 of the Laws of 1901, in pursuance of which it was made, violates article 1, section 6, of the Constitution of the State of New York and the 14th amendment of the Constitution of the United States, in that it deprives relator of its property by assessment and taxation without giving it an opportunity to be heard and without due process of law, and is, therefore, void; and upon the further ground (2) that the assessment of its shares in national banks is voidable because made without allowing any deduction on account

of relator's debts, as in the case of other moneyed capital in the hands of individual citizens of this State, and that it is, therefore, contrary to section 5219 of the Revised Statutes of the United States. The facts in this matter are undisputed, as the parties have stipulated that relator is a Connecticut savings bank and owned shares of stock in national banks and in a State bank on June 1, 1901; that upon that date it had assets and liabilities of such a character and amount that it would have been exempt from taxation in New York if permitted to deduct its debts, as in the case of an individual taxpayer other than a bank stockholder. The relator was assessed pursuant to sections 23 and 24 of the Tax Law, as amended by chapter 550 of the Laws of 1901. Those provisions are as follows: "Sec. 23. The chief fiscal officer of every bank or banking association organized under the authority of this State or of the United States shall, on or before the first day of July, in each year, furnish the assessors of the tax district in which its principal office is located a statement under oath of the condition of such bank or banking association on the first day of June next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares

thereof, the amount of stock paid in, the amount of its surplus and of its undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each. In case of neglect or refusal on the part of any bank or banking association to report as herein prescribed, or to make other or further reports as may be required, such bank or banking association shall forfeit the sum of one hundred dollars for each failure, and the additional sum of ten dollars for each day such failure continues, and an action therefor shall be prosecuted by the county treasurer of the county in which such bank or banking association so neglecting or refusing to report is located, and in the city of New York by the receiver of taxes thereof. There shall, in addition to such report, be kept in the office of every such bank or banking association a full and correct list of the names and residences of all stockholders therein, and of the number of shares held by each, and such lists shall be subject to the inspection of the assessors at all times. The list of stockholders furnished by such bank or banking association shall be deemed to contain the names of the owners of such shares as are set opposite them, respectively, for the purpose of assessment and taxa-

tion." And section 24 provides that: "In assessing the shares of stock of banks or banking associations, organized under the authority of this State or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other monied capital in the hands of individual citizens of this State. The value of each share of stock of each bank and banking association shall be ascertained and fixed by adding together the amount of the capital stock, surplus and undivided profits of such bank or banking association, and by dividing the result by the number of outstanding shares of such bank or banking association. The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value thereof, as ascertained and fixed in the manner hereinbefore provided, and the owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners or for any other reason whatsoever. Complaints in relation to the assessments of the shares of stock of banks and banking associations made under the provisions of this act shall be heard and de-

termined as provided in article two, section thirty-six, of the Tax Law * * *."

As required by section 23, the chief fiscal officers of the banks whose shares are owned by relator reported to respondents their respective conditions. The relator gave notice on June first that it claimed to be exempt from assessment on account of its debts, but was refused a hearing. The stocks were assessed prior to October 30, 1901, and notice given the respective banks on October 31, 1901, whereupon relator sued out the writ herein. The tax rate for 1901, in the borough of Manhattan, city of New York, where all the banks are located, was 2.31733 per cent., while the rate fixed by section 24 (*supra*) for bank stocks is one per cent. upon their value as determined by said section. The omission to provide by statute for a hearing of the individual owners of stocks in banks, before determining the value of the shares for purposes of taxation, is claimed by relator to deprive it of its property without due process of law, and to be contrary to the Constitutions both of this State and of the United States. The only provision for the hearing of complaints of individual shareholders is contained in section 24 (*supra*), which says: "Complaints in relation to the assessments of

the shares of stock of banks and banking associations, made under the provisions of this act, shall be heard and determined as provided in article two, section thirty-six, of the Tax Law." Section 36 relates to assessment rolls completed on or before August first in each year. Thus the time for hearing complaints, as provided for by sections 24 and 36, expires before the first step is taken to assess bank stocks as provided by Section 24, and relator is thus deprived of an individual hearing. What is "due process of law" is a matter that is always determined by courts upon the facts of each case. As said in *Glidden v. Harrington* (189 U. S., 255), "such notices shall be given as are suitable in a given case and it is only where the proceedings are arbitrary, oppressive or unjust that they are declared to be not due process of law." Again in the case of *Turpin v. Lemon* (187 U. S., 51), the Supreme Court of the United States said: "Exactly what due process of law requires in the assessment and collection of general taxes has never yet been decided by this court, although we have had frequent occasion to hold that, in proceedings for the condemnation of land under the law of eminent domain, or for the imposition of special taxes for local improvements, notice

to the owner at some stage of the proceedings, as well as an opportunity to defend, is essential (citing cases). But laws for the assessment and collection of general taxes stand upon a somewhat different footing, and are construed with the utmost liberality, sometimes even to the extent of holding that no notice whatever is necessary." In the case at bar relator has an opportunity to contest the validity of the tax in this proceeding when it becomes practically *de novo* hearing and obtain for itself due and legal disposition of its objections to the tax imposed. In *Hagar v. Reclamation District No. 108* (111 U. S. 701) the Supreme Court of the United States again stated: "In some States, instead of a board of revision or equalization, the assessment may be revised by proceedings in the courts and be then corrected if erroneous, or set aside if invalid; or objections to the validity or amount of the assessment may be taken when the attempt is made to enforce it. In such cases all the opportunity is given to the taxpayer to be heard respecting the assessment which can be deemed essential to render the proceedings due process of law." There is nothing arbitrary, oppressive or unjust in the proceedings herein. The act defines the man-

ner of arriving at the value of the shares of stock in banks. It requires a statement from some person who shall be the chief fiscal officer of the bank. Manifestly any information that a shareholder would furnish on an individual application would be nothing but hearsay as compared with the proof given by the officer who is charged with a knowledge of its finances and from whom the stockholder must necessarily get the information he would vouchsafe. There is no deduction allowed for the individual debts of shareholders, and, consequently, unless it is found that such a provision is invalid, then no hearing of the individual shareholders was necessary, other than the remedy which this proceeding gives, and there is no violation of relator's constitutional rights.

This brings us to the second objection of relator to this assessment. Section 5219 of the United States Revised Statutes declares: 'Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal p perty of the owner or holder of such shares in ssessing taxes imposed by authority of the State within which the association is located; but the Legislature of each State may determine and direct the manner and

place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere." That section of the United States Revised Statutes is the measure of the power of any State to tax, as it is conceded that without it no State has any power to tax the shares of national banking associations (*Owensboro Nat. Bank v. Owensboro, 173 U. S., 664*). So that any tax levied pursuant thereto is subject to the restrictions contained therein. Under the Tax Law of the State of New York (Section 21) persons and corporations have the right to deduct their debts from personal property subject to taxation for town, county or municipal purposes (*People ex rel. Cornell Steamboat Co. v. Dederick, 161 N. Y., 195*). By comparing section 21 with section 24 it appears that owners of personal property generally throughout this State are taxed for their personal property, less any debts they

may owe which were not incurred in the purchase of non-taxable property at the same rate as all other property within the tax district where the owner resides; while as to bank shares the rate is one per cent. upon their value without any right to a deduction for debts of the owner, and the tax is payable in the tax district where the bank is located. The relator relies principally upon the case of *People v. Weaver* (100 U. S., 539), which was decided under chapter 761 of the Laws of 1866, the Tax Law of this State then in force. *The facts are the same as in the case at bar.* The debts of the person taxed were not deducted from the amount assessed against him on account of his ownership of bank shares, although it was not disputed that he would have had the right in the event that the assessment was against his personal property other than bank shares. The court said: "It cannot be disputed—it is not disputed here—nor is it denied in the opinion of the State court that the effect of the State law is to permit a citizen of New York, who has moneyed capital invested otherwise than in banks to deduct from that capital the sum of all his debts, leaving the remainder alone subject to taxation, while he whose money is in-

vested in shares of bank stocks can make no such deduction. Nor, inasmuch as nearly all the banks in that State and in all others are national banks, can it be denied that the owner of such shares who owes debts is subjected to a heavier tax on account of those shares than the owner of moneyed capital otherwise invested, who also is in debt, because the latter can diminish the amount of his tax by the amount of his indebtedness, while the former cannot. That this works a discrimination against the national bank shares as subjects of taxation, unfavorable to the owners of such shares, is also free from doubt." The court held that the word "rate" in section 5219 did not mean the tax rate alone, but that the assessment, the rate of assessment and the valuation must all be taken together when considering the question of whether the act of the commissioners in the method of enforcing the tax worked a discrimination. *Were that decision the only one upon this question, it would be conclusive upon me in this proceeding, but the question did not seem to be settled by it*, and though it was apparently followed by that court in several later cases, viz., *Supervisors v. Stanley* (105 U. S., 305); *Hills v. Exchange Bank* (*Id.*, 319); *Evansville Bank v.*

Britton (*Id.*, 322), and *Cummings v. Nat. Bank* (101 *id.*, 153), yet in one of those cases, the *Evansville Bank v. Britton* (*supra*) case, there appears in the opinion an expression that "moneyed capital" as used in the act of Congress does not mean the same as personal property, and saying: "Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital." Those decisions were all rendered while the act of 1866 was in force. In 1882, chapter 409, the Tax Law of this State was amended, and the question of what the purpose of the act of Congress was in limiting the State's power to tax national bank shares came before the court in 1886, in the case of *Mercantile Bank v. New York* (121 U. S., 138), where the Supreme Court of the United States stated that: "The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions in order to provide a uniform and secure currency for the people and to facilitate the operations of the Treasury of the United States.

The capital of each of the banks in this system

was to be furnished entirely by private individuals; but for the protection of the government and the people it was required that this capital, so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not subjects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect because these banks were means and agencies established by Congress in execution of the powers of the Government of the United States. It was deemed consistent, however, with these national uses and otherwise expedient to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under State laws, either by

corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of State laws were exempt from an equal burden. The main purpose, therefore, of Congress in fixing limits to State taxation on investments in the shares of national banks was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character." And it then seemed to the court necessary to ascertain what the words "other moneyed capital in the hands of individual citizens," as used in the statute, meant, and this was defined in the same case and followed later in other cases as follows: "Of course, it includes shares in national banks; the use of the word 'other' requires that. If bank shares were not

moneyed capital, the word 'other' in this connection would be without significance. But 'moneyed capital' does not mean all capital, the value of which is measured in terms of money. In this sense, all kinds of real and personal property would be embraced by it, for they all have an estimated value as the subjects of sale. Neither does it necessarily include all forms of investment in which the interest of the owner is expressed in money. Shares of stock in railroad companies, mining companies, manufacturing companies and other corporations are represented by certificates showing that the owner is entitled to an interest, expressed in money value, in the entire capital and property of the corporation, but the property of the corporation which constitutes its invested capital may consist mainly of real and personal property, which, in the hands of individuals, no one would think of calling moneyed capital, and its business may not consist in any kind of dealing in money, or commercial representatives of money. So far as the policy of the government in reference to national banks is concerned, it is indifferent how the States may choose to tax such corporations as those just mentioned, or the interests of individuals in them, or whether they

should be taxed at all. Whether property interests in railroads, in manufacturing enterprises, in mining investments and others of that description are taxed or exempt from taxation, in the contemplation of the law, would have no effect upon the success of national banks. There is no reason, therefore, to suppose that Congress intended, in respect to these matters, to interfere with the power and policy of the States. The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans and dealing in negotiable securities issued by the government, State and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed; and it is the nature of that employment which constitutes it in the eye of this statute: 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the

hands of individuals thus employed is what is intended to be described by the act of Congress." This case is approved and followed in *Aberdeen Bank v. Chehalis County* (166 U. S., 440); *National Bank of Wellington v. Chapman* (173 *id.*, 205), and *Commercial Bank v. Chambers* (182 *id.*, 556). The *Chambers* case was one arising under the laws of Utah, and it approved the distinction heretofore pointed out between "moneyed capital" and capital which does not come into competition with the business of national banks. It also approved of the decision of the courts of Utah in refusing to deduct the value of real estate owned by the bank outside the State, though individual non-resident owners would not be taxed for such real estate. The *Chapman* case was one arising under the laws of Ohio, and again the distinction between "moneyed capital" and capital not coming into competition with national banks was approved. The court there pointed out that the Ohio law was not intended to be unfriendly to or to discriminate against owners of national bank shares, and that exemptions from taxation made for reasons of public policy and not as an unfriendly discrimination against investments in national bank shares could not be regarded as

forbidden by the statute. From the clearly defined purpose of the act of Congress as expressed by the Supreme Court of the United States in the *Mercantile Bank v. New York* case, and from the construction of the term "moneyed capital" in the same case I have arrived at the conclusion that unless the owner of national bank shares can show that there is some unfriendly discrimination against national bank shares as a whole throughout the State that the tax is right and should be upheld. I can see no reason for finding unfriendly discrimination against national bank shares by the respondents, because in the one instance the individual owner of national bank shares may have debts which he could have deducted from his assessment for personal property, but which the law says he cannot deduct from the amount assessed against him for national bank shares. The State has fixed the rate of assessment on bank shares at one per cent., while in the city of New York for the year 1901, the rate on property generally was over two and thirty-one one-hundredths per cent. Couple this with the fact that this rate of assessment was applied not to the actual salable market value of the shares of said stock, but to the book value, and then applying the key to

the proper interpretation of the act of Congress, to wit, its policy and purpose (*Mercantile Bank v. New York*, *supra*), it becomes exceedingly difficult to spell out a discrimination forbidden by such act from the mere fact that in addition to the favor shown both in the rate applied and the valuation taken, there was not the further one given of allowing the deduction of debts.

Writ dismissed, with costs.

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In the Supreme Court of the United States.

OCTOBER TERM, 1912.
No. 8

FILED
NOV 8 1912
JAMES H. McKENNEY

ON WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF THE AMOSKEAG SAVINGS BANK OF MANCHESTER, NEW HAMPSHIRE, *Plaintiff in Error,*

against

LAWSON PURDY, CHARLES J. McCORMACK, JAMES H. TULLY, CHARLES PUTZEL AND HUGH HASTINGS, AS COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY OF NEW YORK, *Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR.

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NEW YORK:
THE EVENING POST JOB PRINTING OFFICE
No. 156 Fulton Street
1912

(14,678)

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912, NO. 58.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the AMOSKEAG SAVINGS BANK OF MANCHESTER, NEW HAMPSHIRE,

Plaintiff in Error,

AGAINST

LAWSON PURDY, CHARLES J. MCCORMACK, JAMES H. TULLY, CHARLES PUTZEL and HUGH HASTINGS, as Commissioners of Taxes and Assessments of The City of New York,

Defendants in Error.

Taxes of 1908.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR DEFENDANTS IN ERROR.

Statement.

The plaintiff in error asserts that the system provided by Sections 23 and 24 of the Tax Law of the State of New York for the taxation of shares of national banking associations is, in view of Subdivision 4 of Section 21 of the State Tax Law, in conflict with Section 5219 of the United States Revised Statutes, which authorizes States to tax such

shares and provides that "the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state."

No reference is made in the specifications of error to other sections contained in the New York Tax Law in 1908, notably, Section 187*a* (now 188), providing for taxation of trust companies, Sections 14 and 25 for taxation of individual bankers, Section 188 (now 191) for tax on foreign bankers, Section 187*b* (now 189) for tax on savings banks, and Section 7 for taxation of capital invested in business by non-residents.

> (The sections mentioned and not contained in the appendix to the brief of plaintiff in error, are printed at pages I–IV of the appendix to this brief.)

Moreover, the record herein presents no statement indicating relative amounts of moneyed capital taxed in the State of New York under sections of the New York Tax Law.

No criticism is made respecting the accuracy or legality of the procedure in the assessments of the bank shares of the plaintiff in error, excepting that the State Law prohibits the deduction of the indebtedness which it claims.

Sections 23 and 24 of the Tax Law apply equally to shares of banks and banking associations organized under the authority of the State of New York and of the United States.

As required by Section 23 of the Tax Law, sworn statements (Exhibits A and AA, Record, pp. 11, 12) by fiscal officers of the American Exchange National Bank and of the Chemical National Bank, located in the City of New York, made in June, 1908, to the defendants, stated facts as to the condition of the banks on June first, 1908, and gave the number of shares therein owned by the plaintiff in error, the Amoskeag Savings Bank of Manchester, New Hampshire.

In reliance upon these statements, the defendants, in accordance with Section 24 of the Tax Law, ascertained, by adding together the amount of capital stock, surplus and undivided profits, and dividing by the number of outstanding shares, the taxable value per share in the American Exchange Bank to be $198.26, and in the Chemical National Bank $281.94 (Record, p. 8).

These amounts were thus not actual or market values, but book values.

They then (Record, p. 9) entered against the Amoskeag Savings Bank assessments of $19,800. and $16,920., determined by multiplying such taxable values by its respective number of shares in the two national banks respectively; and (Record, p. 10) they extended taxes of $198. and $169.20 respectively at one per centum, the rate prescribed by Section 24.

On the day fixed for hearing, the Savings Bank appeared before them by its attorneys and filed applications for cancellation of the assessments (Exhibit B, Record, pp. 13-15), claiming that it had assets of $11,030,493.08 and liabilities of $11,030,493.08, the latter including deposits of $9,981,471.35, that the full value of all its personal property exclusive of such bank shares, not exempt from taxation in New York, did not exceed $1.00, and that its debts of $11,030,493.08 should be deducted from the assessments as no part of such debts had been deducted from the assessments of personal property within or without the State or was incurred in purchasing non-taxable property to evade taxation.

It claimed that failure to allow such deduction, thereby cancelling the assessments, would be illegal and contrary to the restriction contained in Section 5219 of the United States Revised Statutes.

The defendants having concluded (Record, pp. 9-10) that the application presented no lawful reason for cancelling or reducing the assessments, and that the claim for reduction of debts was in conflict with Section 24 of the Tax Law, which provided that the rate of taxation should be one per centum upon the

value ascertained as therein prescribed, without deduction of indebtedness, they required no proof of the indebtedness stated, denied the application and confirmed the assessments.

In this *certiorari* proceeding thereupon instituted by the Amoskeag Savings Bank, wherein the statements of the application were admitted and it was conceded that the general tax rate in the city of New York in 1908 was 1.61407 per cent. (Record, p. 17), the Special Term of the Supreme Court dismissed the writ and proceeding (Record, pp. 15–16) without opinion; and its order upon the relator's appeal to the Appellate Division of the Supreme Court was affirmed "on *People ex rel. Bridgeport Bank* vs. *Feitner*, 191 N. Y., 88" (Record, pp. 18–20).

Upon the relator's appeal to the Court of Appeals of the State of New York the order of the Appellate Division was affirmed "on authority of *People ex rel. Bridgeport Savings Bank* vs. *Feitner*, etc. (191 N. Y., 88)," and it was further ordered that the record and proceedings be remitted to the United States Supreme Court (Record, p. 21).

ARGUMENT.

FIRST POINT.

The system of taxation established by the tax law of New York does not discriminate against shares of National Bank stock, but on the contrary is favorable to capital so invested, it was desired by the banks and it is successful and fair in its operation.

The argument of the plaintiff is that the prohibition of Section 24 of the New York Tax Law against deduction of indebtedness of shareholders

from the taxable value therein prescribed, compared with Section 21 of the Tax Law permitting deduction of debts from full value in the assessment of certain other personal property in the State, creates a discrimination, the effect of which is to render national banks stock an undesirable investment, thus violating the restriction of Section 5219 of the Revised Statutes of the United States.

As authority for this conclusion, it places its main reliance upon *People* v. *Weaver*, 100 U. S., 539.

The argument fails to give due weight to *all* the provisions of Section 24, to the nature of the assessments made under Section 21, to other provisions of the New York Tax Law, and to the decisions of this Court showing that the restriction contained in Section 5219 of the Federal act is not violated unless it affirmatively appears that a substantial discrimination exists in the assessment of national bank shares compared with invested capital of a similar and competing character.

The Court, necessarily, is to contemplate, not isolated provisions of the system of State taxation, but, broadly, the entire system.

At the outset, the following facts, not fully recognized by the plaintiff, are apparent:

(1) That Sections 23 and 24 of the New York Tax Law apply equally to the taxation of shares of state banks and national banks;

(2) That Section 24 prescribes assessments based not upon actual market or full value of shares, but upon a book value determined by adding together the capital stock, surplus and undivided profits of the banks, as reported by them, and dividing by the number of shares;

(3) That this method necessarily permits the deduction by the banks of indebtedness arising in their operation;

(4) That the tax upon the assessments thus made is at a prescribed rate of one per cent., and not at the higher and variable tax rate determined by dividing the amount to be raised by the general property tax by the assessed value of property subject to such tax. This tax rate in the County of New York, City of New York, was 1.61407 per cent. in 1908.

(5) That such personal property in the State as is assessed under Section 21 of the Tax Law is first valued at its "full," actual or market value, before any deduction of any indebtedness may be made, and such assessment then bears the general local rate of taxation which, in the City of New York, in 1908, was 1.61407 per cent.;

(6) That trust companies, whose business alone is of such a character, next to the business of State banks, as to come in any active competition with the business of national banks, were, by Section 187*a* (now 191) of the State Tax Law, required to pay a precisely similar tax of one per centum on the amount of capital stock, surplus and undivided profits;

(7) That other provisions of the New York Tax Law specifically prescribe for taxation of resident and non-resident bankers, individual and incorporated, and even for a specific tax on savings banks; and

(8) That non-residents desiring to invest capital in business in New York State, other than in national bank shares, as did this non-resident savings bank, the plaintiff, or in state bank shares, are taxed on their capital invested in such business, and are permitted, under the decisions, to deduct, as do the national and state banks, only indebtedness arising in such business.

In the light of these facts and having in view the broad system of taxation provided by the State Tax

Law, the conclusion that the system discriminates in the assessment of national bank shares, in violation of Section 5219, is without foundation.

Certainly, it does not upon its face create an unequal and unfriendly competition by favoring business and operations and investments of a character similar to and in competition with the business and operations of national banks.

The statute now before the Court differs materially from the statute in effect in *People* v. *Weaver* (100 U. S., 539).

The facts are *not* the same. The contrary conclusion of the plaintiff and the statement referred to by it, made by a trial justice in *People ex rel. Bridgeport Savings Bank* v. *Feitner* (120 App. Div. [N. Y.], 838, 844), to that effect are erroneous.

In the *Weaver* case, the act (Chapter 761, Laws 1866) provided for taxation of the shares of bank stock at their market value or full value, and not, as in this case, at a book value. No rate of taxation on assessments of bank shares was prescribed, as here; but the tax rate was the same as upon all other personal property which was also assessed at full value but with the privilege of deducting indebtedness.

The New York Court of Appeals had held that, under that act, no deduction of debts should be made in the assessment of bank shares, and, when the case came before this Court on an agreed statement of facts, it was accordingly said by Mr. Justice Miller (pp. 542-543):

> " It cannot be *disputed*,—it is not disputed here,—nor is it *denied* in the opinion of the State court that the effect of the State law is to permit a citizen of New York, who has money capital invested otherwise than in banks, to deduct from that capital the sum of all his debts, leaving the remainder alone subject to taxation, while he whose money is invested in shares of bank stock can make no such deduction. Nor * * * can

> it be *denied* that the owner of such shares who owes debts is subjected to a *heavier tax* on account of those shares than the owner of monied capital otherwise invested. * * * That this works a discrimination * * * is also free from doubt."

Here such a conclusion is not free from doubt. Moreover, it is vigorously disputed by the defendants and it is denied in the opinion in the *Bridgeport* case (191 N. Y., 88, 96) that the effect of the State law is to permit the citizen who has moneyed capital invested otherwise than in banks to be taxed less, proportionately, than he who has such an investment.

The crucial point decided in the *Weaver* case—seemingly overlooked by the plaintiff, but relied upon by the defendants as the foundation of their contention—was, as expressed in the syllabus of that case, that the restriction in Section 5219 "has reference to the *entire process* of assessment, and includes the *valuation* of shares as well as the rate of percentage charged thereon."

In the *Weaver* case, it appeared, simply, from the agreed statement of facts, that a mode of assessment was provided by which shares were valued for assessment higher, in proportion to their real value, than other monied capital, and this, accordingly, was held to be in conflict with Section 5219, although no greater percentage of tax was levied on such valuation than that upon other moneyed capital. The State Court had held that as the rate or percentage of tax was the same, Section 5219 was not violated.

Under these circumstances, the Supreme Court of the United States said (pp. 544-545):

> "Seizing upon the word 'rate' in this sentence as if disconnected from the word 'assessment,' and construing it to mean percentage *on any* valuation that might be made, the Court of Appeals arrived at the conclusion that, since that percentage is the same in all cases, the act of Congress is not infringed."

It was accordingly pointed out (p. 545):

> "This *valuation*, then, is part of the *assessment* of taxes. It is a necessary part of every assessment of taxes which is governed by a ratio or percentage. There can be no rate or percentage without a valuation. * * * We see that Congress had in its mind an *assessment*, a *rate* of assessment, and a *valuation;* and, taking *all these together*, the taxation on these shares was not to be greater than on other moneyed capital."

Since the decision in the *Weaver* case, this court has had frequent occasion to discuss "moneyed capital" and has stated rules, unnecessary in that decision but pertinent here, and hereinafter referred to, defining the term and showing that no discrimination or violation of Section 5219 exists, unless it be shown that a material, substantial part of moneyed capital not invested in national bank shares but in competition with national banks, is favored by the system of taxation in effect.

Sufficient has been stated to show that here the error in seizing upon a part of the provision of a statute, is committed by the plaintiff, since its argument is centered upon the single circumstance that in the method provided by Section 24 of the State Tax Law for assessing bank shares, deduction of indebtedness is not allowed, whereas, in assessing some other forms of personal property by a different method, deduction is allowed. The defendants, therefore, ask this Court to follow the principle of the *Weaver* case that due weight be given to all the provisions of the statute, thus keeping in view the general system of taxation provided.

We have thus referred at length to the *Weaver* case, not to contend that it was improperly decided upon the facts then presented, nor that it has been overruled (although more recent decisions have explained and defined the application of the restriction of Section 5219), but to point out that here we have a different statute and different contentions, and

that the principle established in that case—that due regard be given all the statutory provisions—should be adopted herein, particularly as the plaintiff's entire argument rests upon that decision and it has inadvertently been referred to erroneously by the trial Court in the *Bridgeport* case (*supra*), as presenting facts similar to those herein presented.

The Court of Appeals of New York did not fall into such error, but recognizing that a different case was presented, made no reference to the *Weaver* case, and, in the *Bridgeport Savings Bank* case, which it relied upon in its decision herein, said simply (191 N. Y., 88; pp. 95-96):

> "We have little trouble over the claim of the relator that the assessment upon its shares of stock in national banks is unlawful because no deduction of debts was allowed. No unequal burden was cast upon national banks or their stockholders, nor any unjust discrimination made against them by our Tax Law, merely because a different system was adopted in taxing their shares of stock, as well as the shares of stock in state banks, from that applied to other personal property. * * * The rule of valuation prescribed by the state statute is to add the amount of capital stock, surplus and undivided profits together and divide the result by the number of shares outstanding. * * * The assessment, although based on this valuation, is not made, as in other cases, in accordance with the proportion which such valuation bears to the amount necessary to be raised by government, but upon the basis of a flat rate of one per centum, which, in the case before us, was less than one-half the rate at which other property was taxed. The state is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality nor unfriendly discrimination is inflicted upon them. We find nothing of this character either in what was done in the case before us or in what might be done in any case under the Tax Law."

It is true that the Court of Appeals referred to the prescribed valuation of bank shares for purposes of assessment as leading to "the exact value" of each share, whereas it was not the "full" or market value, which is the basis of assessment of certain other property; and that it intimated that stockholders, in districts where a general local rate was less than one per cent, might be entitled to a reduction to conform thereto, whereas, in fact, before any such reduction could properly be allowed upon the ground of violation of Section 5219, it would be necessary to show clearly that the application of the system resulted in material, substantial discrimination favoring other monied capital in competition with national bank capital.

This reference and intimation, however, are to be explained by the fact that the case before the Court did not present elements showing violation of the act of Congress, and particularly by the fact that the *Bridgeport Savings Bank* case turned upon an entirely distinct point, namely, that, unfortunately, there had been irregularity in the procedure of assessment in 1901—the year of assessment there involved—in failure to publish notice of hearing which rendered the assessments voidable and compelled the Court to cancel them.

Upon such decision the procedure was changed in 1908, so that the same attorneys, who also represented the Amoskeag Savings Bank, again presented the question of violation of Section 5219, but not associated with any error of procedure. As the subject of violation of the Federal act had already been decided in the Bridgeport case, the Court of Appeals followed such decision herein.

The provisions of the Tax Law now before the Court were enacted in 1901 (Chapter 550, Laws 1901) as the result of a movement initiated by national banks in New York. They had found objections to the statute previously in effect, which was similar to the statute before the Court in *Mercantile Bank* v. *New York* (121 U. S., 138).

In that case, and prior to 1901, shares of bank stock were assessed at their actual value as other personal property, deduction of debts was allowed from such valuation, and the rates or percentages of tax applied were the general rates fixed in each different tax district of the State.

Although in the *Mercantile Bank* case, this Court decided that this resulted in no discrimination against the shares of national banks in violation of Section 5219, the banks felt that grave evils existed in the system. The State Bankers Association, accordingly, by committee, after an investigation, pointed out that the percentages of taxation varied throughout the state, that owing to deduction of indebtedness of shareholders the assessments upon bank shares in the same locality differed widely, that trust companies, although not held in the *Mercantile* case to be competitors, necessarily, of national banks, had a strong tendency in that direction and, in fact, paid little personal tax, and that real property was generally assessed at less than seventy per cent. of actual value, and, in some rural districts, at not over forty per cent. The tax rate in some places was thus three per cent. upon a fifty per cent. valuation, instead of one-and-a-half per cent. on a full valuation. They accordingly urged the amendments to the state law (Ch. 550, Laws 1901) to provide a system applicable throughout the state, in the assessment of shares of national and state banks, upon a prescribed book valuation, without deduction of debts of shareholders, and at a uniform percentage of tax of one per cent. and (Ch. 132, Laws 1901) to provide a similar method for assessment of capital of trust companies.

In view of the impressive report made by them, the proposed amendments were enacted. The purpose and intent of the legislation was, as far as practicable, to put all moneyed capital on the same basis in respect of taxation. An immediate result was that trust companies, paying, in 1900 in New York City, upon total assessments of less than

$9,000,000, paid in 1901 upon assessments of over $148,000,000. National and state bank shares were taxed as the capital of trust companies, and, although there were some private bankers whose capital was to be assessed by different methods,—since it was impossible to include them,—the total amount of such capital, as compared with that of banks and trust companies, was negligible. Moreover, the requirement that such capital be assessed at actual value, and the provision for special tax upon foreign bankers, individuals and corporations, permitted no material difference in taxation. As all banks, national and state, and all trust companies were put upon the same basis, the competition from other persons treated in some respects differently, was trifling.

Moreover, it was apparent that the prohibition against deduction of debts of individual shareholders of banks was only technically and not economically a prohibition of deduction of indebtedness. It worked no discrimination whatever against the shareholder of a bank as compared with the shareholder of any other corporation, and if the shareholder of a bank was allowed to deduct his debts, there would, in effect, be a double debt deduction.

All the debts owed by the bank are deducted from the bank's gross assets in the system of valuation provided, and, so far as debt deduction is concerned, a non-resident shareholder of a bank is treated as is any other non-resident who invests any capital in any business in the State of New York.

In fact, the non-resident shareholder has an additional inducement to invest in the shares of national banks located in the state. If he makes such investment, the capital invested is assessed at a book value determined after deducting the indebtedness of the bank, and then is taxed at one per cent. If he invests in any other business in the state, the capital invested is, under Section 7 of the Tax Law, assessed at its actual value with deduction of indebtedness of the business in the state and not

deduction of general personal indebtedness (*People ex rel. Dunlaps Express Co.* v. *Raymond*, 54 Misc. [N. Y.], 330, 331), and then is taxed at the local tax rate which, as in New York City, exceeds one per cent.

The operation of the law, it can be seen, has been harmonious and successful. It has prevented, not created, discrimination against the banking business. More national banks have been incorporated since its enactment and they have thriven under it. In fact the records show in New York City that the assessments upon bank shares have increased from $183,000,000 in 1901 to $356,000,000 in 1911, whereas the assessments upon trust companies in the whole state have increased from $157,800,000 in 1901 to $248,000,000 in 1911.

It may be conceded that this plaintiff, a foreign savings bank, would receive a slightly increased dividend, if the assessment upon its shares were cancelled by permitting its large indebtedness to its depositors in New Hampshire to be deducted from the book valuation of its shares.

But the test applicable is the effect of the taxation upon the national banks of the State,—not the effect upon certain shareholders,—and it by no means follows that the system of taxation, viewed in its broader aspect, operates to discriminate in favor of other investments of moneyed capital in competition with national banks, which alone has been held to warrant interference by the Court upon the ground of violation of Section 5219. Under the existing system, if the Amoskeag Bank concluded not to invest, there is ample inducement to others; neither the banks nor the National Government would be crippled or embarrassed; and, in fact, the plaintiff could not, under the system in effect, invest its capital in the State of New York in any other business, either as moneyed capital or otherwise, so advantageously as in its national bank shares.

SECOND POINT.

The plaintiff has failed to show that the taxes imposed upon National Bank shares in New York are at a greater rate than taxes imposed upon other moneyed capital in the State.

No attempt is made by the plaintiff to show the actual value of capital invested in national bank shares as compared with the valuation upon which they are assessed by the method prescribed by the New York law; and the Court might even take judicial notice that the market value of the shares of the Chemical National Bank and the American Exchange National Bank of the plaintiff far exceeded the book value at which they were assessed.

Nor is there any evidence showing the value of moneyed capital invested in national and state banks and in trust companies similarly assessed, nor any proof of the full value of moneyed capital, if any, assessed under section 21 of the Tax Law or under other sections of the State law.

Finally, no comparison is presented as to taxes imposed upon book value assessments at one per cent. and taxes imposed upon full value assessments at the local rates of percentage.

It follows that no conclusion can be reached that the taxation of national bank shares is at a greater rate than is imposed upon other moneyed capital.

It is only where, as said in the early case of *Pelton* v. *National Bank*, 101 U. S., 143, p. 146, the system of State taxation "exacts from the owner of the shares of a national bank a larger sum *in proportion to their actual value* than it does from the owner of other moneyed capital valued in *like manner*" that the taxation is at a greater rate, within the meaning of section 5219 of the United States Revised Statutes.

In that case it was said by the Court (p. 146):

> "it is not denied in argument that while all the personal property in Cleveland, including moneyed capital not invested in banks, was in the assessment valued far below its *real worth*, say at one-half or less, the shares of the banks, after deducting the real estate of the banks separately taxed, were assessed at their full value, or very near it."

After referring to the figures presented, the Court said (p. 148):

> "It is thus *seen* that the auditor and the city board of equalization valued these shares *higher* in proportion to other moneyed capital in Cleveland to an extent * * * which may be supposed to be thirty per cent. * * * and the State board added about one-fourth to that, so that, the tax on national bank shares * * * is between fifty and sixty per cent. on its *real* value greater than on other moneyed capital."

No such proof is here presented.

As said in *Evansville Bank* v. *Britton*, 105 U. S., 322, p. 324:

> "The act of Congress does not make the tax on *personal property* the measure of the tax on bank shares in the state * * * but the tax on *moneyed capital* in the hands of the individual citizens."

And in that case, it appearing that other moneyed capital assessed at *full* value obtained deduction of individual indebtedness, an injunction was granted only to those shareholders who had proved that at the time of assessment of their shares at *cash* value, they had debts which should have been deducted.

And in *Boyer* vs. *Boyer*, 113 U. S., 689, the Court, after pointing out (p. 693) that *Hepburn* vs. *The School Directors*, 23 Wall., 480,

> "is authority for the proposition that a *partial* exemption by a State, for local purposes,

> of moneyed capital in the hands of individual citizens, does not, of itself and *without reference to the aggregate amount* of moneyed capital not so exempted, establish the right to a similar exemption in favor of national bank shares held by persons within the same jurisdiction",

said (p. 694):

> "the discretionary power of the legislature over such subjects remained as before the act of 1868, the intention of that statute being to protect corporations formed under its authority from *unfriendly* discrimination by the States in the exercise of their taxing power."

And, after referring (p. 695) to *People* vs. *Weaver*, the Court considered (pp. 696, 697) the provisions of the laws of Pennsylvania, and (pp. 699, 701) the allegations and figures of valuations and taxes, admitted by the demurrer, upon various property in the state, and said (p. 701):

> "Upon such facts, and in view of the revenue laws of the State, it seems difficult to avoid the conclusion that, in respect to county taxation of national bank shares, there has been, and is, such a discrimination, in favor of other moneyed capital against capital invested in such shares, as is not consistent with the legislation of Congress. The exemptions in favor of other moneyed capital *appear* to be of such a *substantial character in amount* as to take the present case out of the operation of the rule that it is not absolute equality that is contemplated by the act of Congress * * * when the inequality is so palpable as to show that the discrimination against capital invested in such shares is serious, the courts have no discretion but to interfere."

It was accordingly held that the defendant should answer, the Court saying (p. 703):

> "The facts may then disclose a case quite different from that made by the bill. What

we have said relates to the case as now presented."

Similarly in *Whitbeck* v. *Mercantile Bank*, 127 U. S., 193, it was made to appear, as explained in *National Bank of Wellington* v. *Chapman*, 173 U. S., 205 (pp. 219, 220), that there was *material* discrimination in the assessment of national bank shares in that the assessed value, fixed at sixty per cent. of their true value in money, as other property was valued, was increased by the state board of equalization to sixty-five per cent., without such increase in the assessment of other property. Assuming that owners of moneyed capital in Ohio, other than national bank shares, were permitted to deduct their indebtedness, whereas there was no provision for such deduction by owners of national bank shares, it was held that such owners might make that deduction as in the case of other moneyed capital, and that timely application for such deduction had been made.

In the *Chapman* case, 173 U. S., 205, which is somewhat analogous to the case at bar, the Court said, at page 213:

> "The complaint is founded upon the allegation that the owners of what is termed credits, in the law of Ohio * * * are permitted to deduct certain kinds of their debts from the total amount of their credits, and such owners are assessed upon the balance only, while no such right is given to owners of shares in national banks."

After referring to decisions subsequent to *People* v. *Weaver*, *supra*, and stating (p. 214) that they required for interference of the Court that a clear material discrimination against the national bank shareholders and in favor of other moneyed capital in competition with national banks be shown, the Court said (pp. 217–219):

> "There is no finding of the trial Court upon the subject of the total amount of

> credits in the State. Reference was made on the argument to the report of the auditor of the state for 1893. * * * if we were to look at this report we should then see that the total credits do not show what *portion* of those credits consists of moneyed capital in the hands of individuals which in fact enters into competition for business with national banks * * *. Indeed, there is no evidence as to what the total moneyed capital in the hands of individual citizens, and included in the term 'credits' amounts to, even under the widest definition of that term. * * * It is impossible to tell from anything appearing in the record what *proportion* of the whole sum of credits consists of moneyed capital within the meaning of the Federal act. * * * We are, therefore, unable to say whether there has or has not been any *material* discrimination such as the Federal statute was enacted to prevent. * * * There is nothing upon the face of these statutes which shows such discrimination, and, therefore, it would seem that the plaintiff in error has failed to make out a case for the intervention of the Court."

And in *People's National Bank* v. *Marye*, 191 U. S., 272, cited by the plaintiff, relating to taxation of national bank shares in Virginia, wherein it was claimed that the statute was void, among other things, for failure to permit shareholders to deduct indebtedness, while holders of large amounts of other moneyed capital were permitted to do so, it was held, simply, that the statutes were not void and that, without considering whether the failure to make deductions was a violation of the Federal Act, the bill in equity should be dismissed, as the plaintiff had not made payment or tendered payment of the part of the tax which it admitted was due.

Again, in *First National Bank of Garnett* v. *Ayers*, 160 U. S., 660, not mentioned by plaintiff, but which bears striking similarity to the present case, it was claimed that the statute of Kansas regulating the assessment and taxation of shares in

national banks permitted some debts to be deducted from some moneyed capital, but not from that which was invested in shares of national banks, thus violating section 5219 of the Federal Act. It was said by Mr. Justice Peckham (pp. 667, 668):

> "From the record in this case it is wholly impossible to determine that there is any discrimination against the holders of national bank stock * * *. it would be necessary for this Court to take * * * judicial notice * * * that the amount of moneyed capital in the State of Kansas from which debts may be deducted, as compared with moneyed capital invested in shares of national banks was *so large and substantial* as to amount to an illegal discrimination against national bank shareholders. This we cannot do. There is no proof whatever upon the subject. * * * The single fact that the statute of Kansas permitted some debts to be deducted from some moneyed capital, but not from that which is invested in the shares of national banks, is not sufficient to show such violation."

Far from being authority, as some of these decisions are claimed by the plaintiff to be, for holding herein that the New York State Law violates section 5219 of the Act of Congress, all of them clearly demonstrate that it was incumbent upon the plaintiff to present a case from which the conclusion could fairly be reached,—taking into consideration the actual value of national bank shares, the percentage of tax and the amounts of capital so invested and taxed and also the amounts invested in other moneyed capital, the actual value of such capital and its assessment with or without deduction of debts, and the percentage of tax,—that the taxation of national bank shares was at a greater rate than the taxation upon other moneyed capital in the state.

The record is barren of any such showing and it follows that this Court cannot justly be required to

interfere with the assessments upon the plaintiff's shares.

In the absence of adverse proof of the practical working of the Tax Law, it is impossible to predicate unfriendly and substantial discrimination against national bank shares upon the mere prohibition of deduction of debts from a valuation not shown to be excessive or even actual, the percentage of tax upon such valuation being much less than the rate applied in general to personal property upon an actual value assessment.

THIRD POINT.

In the absence of any material, unfriendly or substantial discrimination against capital invested in national banks compared with capital of a similar and competing character, no case is presented requiring the Court to interpose for the protection of shareholders in national banks and to determine that the system of taxation is in conflict with the act of Congress.

This point is established by the decisions of this Court subsequent to the decision in *People* v. *Weaver*, 100 U. S., 539, and is not referred to by the plaintiff.

Such decisions although not overruling that case, explain more fully the object and meaning of the Federal Act and define the limits beyond which the Court will decline to hold state taxation in violation of that act.

In the *Weaver* case itself, the Court said (pp. 543, 545):

> "Congress * * * undertook to impose a restriction on the exercise of that power,

> manifestly designed to prevent taxation which should discriminate against this class of property as compared with other moneyed capital * * *. It was conceived that by this qualification of the power of taxation equality would be secured and injustice prevented * * *. We see that Congress had in its mind an *assessment*, a *rate* of assessment and a *valuation;* and taking all of these together, the taxation on these shares was not to be greater than on other moneyed capital."

If in that case, as here, the percentage of tax had been much less than the general local rate and the valuation had been limited, as here, to a book value instead of actual market value, and it had further appeared, as here, that certainly the bulk of all moneyed capital was taxed precisely the same, a different situation would have been presented.

And in *Boyer* vs. *Boyer*, 113 U. S., 689, the Court, citing prior decisions, including the *Weaver* case, said (p. 695):

> "These decisions show that, in whatever form the question has arisen, this Court has steadily kept in view the intention of Congress not to permit any *substantial* discrimination in favor of moneyed capital, in the hands of individual citizens, as against capital invested in the shares of national banks."

And, citing *Hepburn* vs. *The School Directors*, 23 Wall., 480, said (p. 702):

> "Capital invested in national bank shares was intended to be placed upon the same footing of *substantial* equality in respect of taxation by the State authority, as the State establishes for other moneyed capital * * *."

In *Mercantile Bank* vs. *New York*, 121 U. S., 138, it was claimed that the New York system of taxation then in effect violated the Federal Act and an agreed statement of facts set forth in detail amounts

of actual capital in various forms and capital exempted from taxation. The Court said (pp. 154–155):

> "The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people, and to facilitate the operations of the Treasury of the United States * * *. It was deemed consistent * * * to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would *prevent* the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. * * * The main purpose, therefore, of Congress, in fixing limits to state taxation on investment in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy. Applying this rule of construction, we are led, in the first place, to consider the meaning of the words 'other moneyed capital' * * * 'moneyed capital' does not mean all capital the value of which is measured in terms of money. * * *"

And after referring to the distinguishing features of the business of banking as defined by law and custom, including the issue of notes payable on demand, receiving deposits payable on demand, discounting commercial paper, and making loans of money, and dealing in negotiable securities, the Court said (p. 156):

> "These are the operations in which the capital invested in national banks is employed,

and it is the nature of that employment which constitutes it in the eye of this Statute 'moneyed capital'."

What was meant by "other moneyed capital" was thus fully and clearly explained (p. 157):

> "The terms of the Act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."

It was then stated that business corporations did not compete with national banks; and considering the cases of trust companies and savings banks, the Court showed that trust companies were taxable upon the actual value of their stock, and said (p. 159) that in New York they

> "are not banks in the commercial sense of that word, and do not perform the functions of banks in carrying on the exchanges of commerce. * * * But we fail to find in the record any sufficient ground to believe that the rate of taxation, *which in fact falls* upon this form of investment of moneyed capital, is less than that imposed upon shares of stock in national banks."

Respecting savings bank deposits exempted by the Statute from taxation, the Court held (p. 161):

> "we are equally clear that they are not within the meaning of the Act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States."

In *Palmer* v. *McMahon*, 133 U. S., 660, the decisions were reviewed and it was pointed out, citing the Mercantile case (p. 667), that it does not follow that stockholders of national banks are discriminated against because the taxation of other corporations is arrived at under a different system or are not taxed at all, and that 'The main purpose of Congress * * * was, to render it impossible * * * to create and foster an unequal and unfriendly competition."

Again, in *First National Bank of Garnett* v. *Ayers*, 160 U. S., 660, the Court referred to the *Mercantile Bank* decision, saying (p. 666):

> "it is evident from the opinion and decision of the court in that case that the intent of the United States statute was to prevent an unjust discrimination against the moneyed capital invested in shares of national banks, by rendering it 'impossible for the State in levying a tax on such shares to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character.'"

See, also, *Aberdeen Bank* v. *Chehalis County*, 166 U. S., 440, wherein, after reviewing the decisions and the allegations of the bill of complaint, the Court said (p. 462):

> "We agree with the Supreme Court of Washington in thinking that the allegations

> of this complaint nowhere show that any moneyed capital of the character defined by the Federal Supreme Court was omitted or intended to be omitted by the assessors; or if the intention of the complaint be to cover any such existing cases, the allegations are so general and indefinite that they cannot be made the basis of action."

This decision was followed in *Bank of Commerce* v. *Seattle*, 166 U. S., 463, where the Court said (p. 464):

> "We are still uninformed whether the money capital left unassessed was, as to any material portion thereof, moneyed capital coming into competition with that of national banks."

As said in *National Bank of Wellington* vs. *Chapman*, 173 U. S., 205 (p. 216):

> "That mathematical equality is not arrived at in the process is immaterial. It cannot be reached in any system of taxation, and it is useless and idle to attempt it. Equality, so far as the differing facts will permit, and as near as they will permit, is all that can be aimed at or reached."

And the Court pointed out (p. 217) that state and national bank shares were assessed similarly so that there was no illegality "unless there were a clear discrimination in favor of moneyed capital other than that employed in either state or national banks" of a material competing character, of which there was no proof.

In *Commercial Bank* vs. *Chambers*, 182 U. S., 556, where violation of Section 5219 was claimed in view of the provision of the Statute of Utah, which authorized a deduction of debts from credits, but no such deduction in the assessment of bank shares, the Court said (p. 560):

> "The claim of the benefit of the provisions of Section 5219 of the Revised Statutes of the

> United States is unavailing, for the reason that there was neither averment or *proof of facts* taking the case out of the operation of *recent decisions* of this Court. Those decisions held that the term 'moneyed capital,' as employed in Section 5219 of the Revised Statutes, forbidding greater taxation of shareholders of national banks than is imposed on other moneyed capital, does not include capital which does not *come into competition* with the business of national banks, and that it must be satisfactorily made to appear by the proof that the moneyed capital claimed to be given an unjust advantage is of the character just stated."

In *Lauder* vs. *Mercantile Bank*, 186 N. Y., 158, it was held that the question of discrimination as to deduction of debts was one of *fact* to be determined by the record.

Finally, in *Covington* vs. *First National Bank*, 198 U. S., 100, the Court again held (syllabus):

> "A difference in the methods in assessing shares of national banks from that of taxing state bank does not necessarily amount to a discrimination rendering the act invalid under Section 5219 and justify the judicial interference of courts for the protection of the shareholders, unless it appears that the difference in method *actually results* in imposing a greater burden on the national banks than is imposed on other moneyed capital in the state."

It was shown that in Kentucky the assessment of state banks was upon franchise and not upon shares of stock. The Court held (p. 115) that it did not appear that this difference in method operated to discriminate against national bank shareholders by assessing their property at higher rates than were imposed upon capital invested in state banks, and that in the absence of averments of fact showing that there was a heavier burden of taxation imposed upon national than upon state banks, there was no warrant for judicial interference.

In view of these decisions which require it to be established that material and substantial discrimination against capital invested in national banks as compared with capital of a similar and competing character exists in the system of taxation, and in the absence of any proof showing that the system of state taxation in New York results in such discrimination, the defendants submit that this Court is not required to interpose herein.

A determination that the New York State Law, which has been in effect since 1901, and was adopted at the request of the banks for the particular purpose of establishing equality in taxation and avoiding any form of discrimination in the taxation of national bank shares, would be of far reaching consequence. Discrimination should be demonstrated beyond question to warrant such a determination, and the defendants respectfully submit that in this suit at the instance of this foreign savings bank the record fails to show any discrimination whatever in the assessments against the owners of national bank shares, and particularly against non-resident owners, in view of the other provisions of the Tax Law prescribing methods of taxation in the State.

The defendants accordingly ask that the Writ of Error be dismissed and the determination of the State Court affirmed.

Respectfully submitted,

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Attorney for Defendant in Error.

WILLIAM HERBERT KING,
of Counsel.

APPENDIX.

New York Tax Law (5 Birdseye's Cumming & Gilbert Consolidated Laws of New York).

Section 23 (pp. 5845, 5846):

"§ 23. *Banks to Make Report.*—The chief fiscal officer of every bank or banking association organized under the authority *of this state, or of the United States*, shall, on or before the first day of July, in each year, furnish the assessors of the tax district in which its principal office is located a statement under oath of the condition of such bank or banking association on the first day of June next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares thereof, the amount of stock paid in, the amount of its surplus and of its undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each. * * * The list of stockholders furnished by such bank or banking association shall be deemed to contain the names of the owners of such shares as are set opposite them, respectively, for the purpose of assessment and taxation."

Section 21 (pp. 5839–5843):

"§ 21. *Preparation of Assessment-Roll.*—They shall prepare an assessment-roll containing nine separate columns, and shall according to the best information in their power, set down:

1. In the first column the names of all the taxable persons in the tax district.

2. In the second column the quantity of real property taxable to each person with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column the full value of such real property.

4. In the fourth column the *full value* of all the taxable personal property owned by each person respectively after deducting the just debts owing by him. * * *"

Section 188 (formerly 187a) (p. 5964):

"§ 188. *Franchise Tax on Trust Companies.*—Every trust company incorporated, organized or formed under, by or pursuant to a law of this state, and any company authorized to do a trust company's business solely or in connection with any other business, under a general or special law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to *one per centum on the amount of its capital stock, surplus, and undivided profits.*"

Sections 14 and 25 (pp. 5836, 5850):

"§ 14. *Place of taxation of Individual Bank Capital.*—Every individual banker shall be taxable upon the amount of capital invested in his banking business in the tax district where the place of such business is located and shall, for that purpose, be deemed a resident of such tax district."

"§ 25. *Individual banker, how assessed.*—Every individual banker doing business under the laws of this state must report before the fifteenth day of June under oath to the assessors of the tax district in which any of the capital invested in such banking business is taxable, the amount of capital invested in such banking business in such tax district on the first day of June preceding. Such capital shall be assessed as personal property to the banker in whose name such business is carried on."

Section 191 (formerly 188) (pp. 5965, 5966):

"§ 191. *Tax upon Foreign Bankers.*—Every foreign banker doing business in this state, shall annually pay to the treasurer a tax of

five per centum. on the amount of interest or compensation of any kind earned and collected by him on money loaned, used or employed in this state by such banker. The term, doing a banking business, as used in this section, means doing such business as a corporation may be created to do under article two of the banking law, or doing any business which a corporation is authorized by such article to do. The term, foreign banker doing a banking business in this state, as used in this section, includes:

1. Every foreign corporation doing a banking business in this state, except a national bank.

2. Every unincorporated company, partnership, or association of two or more individuals, organized under or pursuant to the laws of another state or country, doing a banking business in this state.

3. Every other unincorporated company, partnership, or association, of two or more individuals, doing a banking business in this state, if the members thereof, owning more than a majority interest therein, or entitled to more than one-half of the profits thereof, or who would, if it were dissolved, be entitled to more than one-half of the net assets thereof, are not residents of this state.

4. Every non-resident of this state, doing a banking business in this state, in his own name and right only."

Section 189 (*formerly 187b*) (pp. 5964, 5965):

"§ 189. *Franchise Tax on Savings Banks.* —Every savings bank incorporated, organized or formed under, by or pursuant to a law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to one per centum on the par value of its surplus, and undivided earnings."

Section 7 (p. 5817):

"§ 7. *When Property of Nonresidents is Taxable.* Subdivision 1. Nonresidents of the state doing business in the state, either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the state."

Mercantile Bank v. *New York*, 121 U. S. 138, followed as to what constitutes moneyed capital within the meaning of § 5219, Rev. Stat.

The State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them. *Bridgeport Savings Bank*, v. *Feitner*, 191 N. Y. 88, approved.

The Federal courts will not overthrow a system of state taxation as discriminatory against national banks under § 5219, Rev. Stat., unless such discrimination is affirmatively shown.

Section 5219, Rev. Stat., deals with shareholders of national banks as a class and not as individuals, and a scheme of taxation that is fair to the class will not be held invalid because of a particular case arising from circumstances personal to the individual affected.

198 N. Y. 503, affirmed.

THE facts, which involve the validity of certain taxes imposed by the taxing officers of New York City upon shares of stock in national banks located in that city and which shares were owned by non-residents of New York, are stated in the opinion.

Mr. Maxwell Evarts, with whom *Mr. George Richards* was on the brief, for plaintiff in error:

No state tax can be assessed against the owners of shares in a national bank which is at a greater rate than the tax imposed upon other moneyed capital in the hands of individual citizens. *Boyer* v. *Boyer*, 113 U. S. 689; *Cornell S. S. Co.* v. *Dietrich*, 161 N. Y. 195; *Covington* v. *First National Bank*, 198 U. S. 100; *Evansville Bank* v. *Britton*, 105 U. S. 322, 324; *Hills* v. *Exchange Bank*, 105 U. S. 319; *Mercantile Bank* v. *New York*, 121 U. S. 138; *National Bank of Wellington* v. *Chapman*, 173 U. S. 205, 220; *Newark Banking Co.* v. *Newark*, 121 U. S. 163; *Palmer* v. *McMahon*, 133 U. S. 660; *Pelton* v. *National Bank*, 101 U. S. 143, 145; *Bridgeport Savings Bank* v. *Feitner*, 191 N. Y. 88; *People* v. *Dolan*, 36 N. Y. 59; *People* v. *Weaver*, 100 U. S. 539; *People's National Bank* v. *Marye*, 191 U. S. 272; *Supervisors* v. *Stanley*, 105 U. S. 305, 311; *Whitbeck* v. *Mercantile Bank*, 127 U. S. 193.

Mr. William Herbert King and *Mr. Lawson Purdy*, with whom *Mr. Archibald R. Watson* was on the brief, for defendants in error:

The system of taxation established by the tax law of New York does not discriminate against shares of national bank stock, but, on the contrary, is favorable to capital so invested; it was desired by the banks, and it is successful and fair in its operation.

The plaintiff has failed to show that the taxes imposed upon national bank shares in New York are at a greater rate than taxes imposed upon other moneyed capital in the State.

In the absence of any material, unfriendly or substantial discrimination against capital invested in national banks compared with capital of a similar and competing character, no case is presented requiring the court to interpose for the protection of shareholders in national banks, and to determine that the system of taxation is in conflict with the act of Congress.

In support of these contentions see *Aberdeen Bank* v. *Chehalis County*, 166 U. S. 440; *Bank of Commerce* v. *Seattle*, 166 U. S. 463; *Boyer* v. *Boyer*, 113 U. S. 689; *Commercial Bank* v. *Chambers*, 182 U. S. 556; *Covington* v. *First National Bank*, 198 U. S. 100; *Evansville Bank* v. *Britton*, 105 U. S. 322; *First National Bank of Garnett* v. *Ayers*, 160 U. S. 660; *Hepburn* v. *The School Directors*, 23 Wall. 480; *Lander* v. *Mercantile Bank*, 186 U. S. 458; *Mercantile Bank* v. *New York*, 121 U. S. 138; *National Bank of Wellington* v. *Chapman*, 173 U. S. 205; *Palmer* v. *McMahon*, 133 U. S. 660; *Pelton* v. *National Bank*, 101 U. S. 143; *Bridgeport Savings Bank* v. *Feitner*, 120 App. Div. (N. Y.) 838; 191 N. Y. 88; *Dunlap's Express Co.* v. *Raymond*, 54 Misc. (N. Y.) 330; *People* v. *Weaver*, 100 U. S. 539; *People's National Bank* v. *Marye*, 191 U. S. 272; *Whitbeck* v. *Mercantile Bank*, 127 U. S. 193.

MR. JUSTICE PITNEY delivered the opinion of the court.

The question presented is the validity of certain taxes imposed in the year 1908 by the taxing officers of New York City upon some shares of stock in certain national banking associations located in that city, which shares were owned by the relator, a New Hampshire corporation doing business in its home State. The taxable value of the shares was ascertained by the Commissioners of Taxes and Assessments, in accordance with the provisions of the law of the State of New York, by adding together the capital, surplus and undivided profits of each bank and dividing the amount by the number of outstanding shares. It is admitted that at the time of the making of this assessment the relator owed just debts exceeding the value of its gross personal estate, including its bank shares, after deducting therefrom the value of its property taxable elsewhere and the value of its property not taxable anywhere; that no portion of such debts had been deducted from the assessment of any of its personal property, other than the bank shares; and that no portion of the indebtedness was contracted in the purchase of non-taxable property or securities or for the purpose of evading taxation. Relator made application to the Commissioners of Taxes and Assessments for the cancellation of the assessment, upon the ground that it was entitled to have its indebtedness deducted from the assessed valuation of the bank shares. This application was denied, a proceeding by *certiorari* taken to review the determination of the Commissioners was dismissed at the special term of the Supreme Court of New York; the Appellate Division affirmed the dismissal (134 App. Div. 966), upon the authority of *People ex rel. Bridgeport Savings Bank* v. *Feitner*, 191 N. Y. 88; and the Court of Appeals affirmed the order of the Appellate Division, upon the same authority, 198 N. Y. 503. The case comes here by writ of error under § 709, Rev.

Stat. (Judicial Code, § 237), upon the ground that the taxation imposed is in violation of the rights of the relator under § 5219, Rev. Stat.[1]

The contention of the plaintiff in error, made in the state tribunals and reiterated here, is that the taxes are invalid because made without allowing any deduction for relator's debts, as alleged to be allowed by the laws of New York in the case of other moneyed capital in the hands of individual citizens of that State; it being insisted that inasmuch as the debts of relator exceeded the valuation of the bank shares, the assessment should be wholly canceled.

The taxing laws in force at the time the assessment was made were in the following year consolidated and re-enacted as the "Tax Law." (L., 1909, c. 62; in effect February 17, 1909; Cons. Laws, c. 60.) Those sections that are deemed in anywise pertinent to the matter in issue are set forth in full in the margin.[2]

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[1] Sec. 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

[2] Extracts from New York Tax Law.

Section 7:

"§ 7. *When Property of Nonresidents Is Taxable.* Subdivision 1. Nonresidents of the state doing business in the state, either as principals or partners, shall be taxed on the capital invested in such busi-

Section 21 provides for the preparation of the assessment roll, and requires that it shall contain separate columns, in which the assessing officers shall set down the pertinent items, and, among others, "4. In the fourth column the full value of all the taxable personal property owned by

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ness, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the state."

SECTIONS 14 and 25:

"§ 14. *Place of Taxation of Individual Bank Capital.*—Every individual banker shall be taxable upon the amount of capital invested in his banking business in the tax district where the place of such business is located and shall, for that purpose, be deemed a resident of such tax district."

"§ 25. *Individual banker, how assessed.*—Every individual banker doing business under the laws of this state must report before the fifteenth day of June under oath to the assessors of the tax district in which any of the capital invested in such banking business is taxable, the amount of capital invested in such banking business in such tax district on the first day of June preceding. Such capital shall be assessed as personal property to the banker in whose name such business is carried on."

SECTION 21:

"§ 21. *Preparation of Assessment-Roll.*—They shall prepare an assessment-roll containing nine separate columns and shall, according to the best information in their power, set down:

1. In the first column the names of all the taxable persons in the tax district.

2. In the second column the quantity of real property taxable to each person with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column the full value of such real property.

4. In the fourth column the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him. . . ."

SECTION 13:

"§ 13. *Stockholders of bank taxable on shares.*—The stockholders of every bank or banking association organized under the authority of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment

each person respectively after deducting the just debts owing by him." This provision is held to apply equally to corporations and individuals (*People ex rel. Cornell Steamboat Co.* v. *Dederick*, 161 N. Y. 195), and has the effect of allowing a deduction of the amount of the debts of the

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of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not."

SECTION 23:

"§ 23. *Banks to Make Report.*—The chief fiscal officer of every bank or banking association organized under the authority of this state, or of the United States, shall, on or before the first day of July, in each year, furnish the assessors of the tax district in which its principal office is located a statement under oath of the condition of such bank or banking association on the first day of June next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares thereof, the amount of stock paid in, the amount of its surplus and of its undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each. . . . The list of stockholders furnished by such bank or banking association shall be deemed to contain the names of the owners of such shares as are set opposite them, respectively, for the purpose of assessment and taxation."

SECTION 24:

"§ 24. *Bank shares, how assessed.*—In assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. The value of each share of stock of each bank and banking association, except such as are in liquidation, shall be ascertained and fixed by adding together the amount of the capital stock, surplus and undivided profits of such bank or banking association and by dividing the result by the number of outstanding shares of such bank or banking association. The value of each share of stock in each bank or banking association in liquidation shall be ascertained and fixed by dividing the actual assets of such bank or banking association by the number of outstanding shares of such bank or banking association. The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value thereof, as ascertained and fixed in the manner hereinbefore pro-

AMOSKEAG SAVINGS BANK *v.* PURDY.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 6. Argued December 4, 5, 1912.—Decided December 1, 1913.

The provisions in the tax law of New York, chap. 62, Laws of 1909, imposing a flat rate on shares of all banks, both state and national, without the right of exemption in case of indebtedness of the owners, does not discriminate against national banks and is not invalid under § 5219, Rev. Stat. *People* v. *Weaver*, 100 U. S. 539, distinguished.

taxpayer from the valuation of his general personal estate, not however including bank shares, which are dealt with in other sections. Section 23 requires the chief fiscal officer of every bank or banking association organized under the laws of the State or of the United States to furnish an-

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vided, and the owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever. Complaints in relation to the assessments of the shares of stock of banks and banking associations made under the provisions of this article shall be heard and determined as provided in section thirty-seven of this chapter. The said tax shall be in lieu of all other taxes whatsoever for state, county or local purposes upon the said shares of stock, and mortgages, judgments and other choses in action and personal property held or owned by banks or banking associations the value of which enters into the value of said shares of stock shall also be exempt from all other state, county or local taxation. The tax herein imposed shall be levied in the following manner: The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from an inspection of the assessment-rolls in their respective counties, the number of shares of stock of banks and banking associations in each town, city, village, school and other tax district, in their several counties, respectively, in which such shares of stock are taxable, the names of the banks issuing the same, respectively, and the assessed value of such shares, as ascertained in the manner provided in this article and entered upon the said assessment-rolls, and shall forthwith mail to the president or cashier of each of said banks or banking associations a statement setting forth the amount of its capital stock, surplus and undivided profits, the number of outstanding shares thereof, the value of each share of stock taxable in said county, as ascertained in the manner herein provided, and the aggregate amount of tax to be collected and paid by such bank and banking association, under the provisions of this article. A certified copy of each of said statements shall be sent to the county treasurer. It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, and in the city of New York to the receiver of taxes thereof on or before the thirty-first day of December in said year; and any bank or banking association failing to pay the

nually, on or before July 1st, to the assessors of the tax district in which its principal office is located, a sworn statement of the condition of the bank on the first day of June next preceding, stating the amount of its capital stock, surplus and undivided profits, the number of shares,

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said tax as herein provided shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax. Every bank or banking association so paying the taxes due upon the shares of its stock shall have a lien on the shares of stock, and on all property of the several share owners in its hands, or which may at any time come into its hands, for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner. The tax hereby imposed shall be distributed in the following manner: The board of supervisors of the several counties shall ascertain the tax rate of each of the several town, city, village, school and other tax districts in their counties, respectively, in which the shares of stock of banks and banking associations shall be taxable, which tax rates shall include the proportion of state and county taxes levied in such districts, respectively, for the year for which the tax is imposed, and the proportion of the tax on bank stock to which each of said districts shall be respectively entitled shall be ascertained by taking such proportion of the tax upon the shares of stock of banks and banking associations, taxable in such districts, respectively, under the provisions of this chapter as the tax rate of such tax district shall bear to the aggregate tax rates of all the tax districts in which said shares of stock shall be taxable. The clerks of the several cities, villages and school districts to which any portion of the tax on shares of stock of banks and banking associations is to be distributed under this section shall, in writing and under oath, annually report to the board of supervisors of their respective counties, during the first week of the annual session of such board, the tax rate of such city, village and school district for the year prior to the meeting of each such board. The said board of supervisors shall issue their warrant or order to the county treasurer on or before the fifteenth day of December in each year, setting forth the number of shares of bank stock taxable in each town, city, village, school and other tax district in said county, in which said shares of stock shall be taxable, the tax rate of each of said tax districts for said year, the proportion of the tax imposed by this chapter to which each of said tax

and the names and residences of the stockholders, with the number of shares held by each. Sections 13 and 24 relate to the taxation of these shares, stockholders in state and in national banks being treated alike. Section 13 takes the place of § 13 of the Tax Law of 1896 (L. 1896, c. 908, p. 802). Section 24 of the latter act was amended by L. 1901, c. 550; L. 1902, c. 126; L. 1903, c. 267; L. 1907,

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districts is entitled, under the provisions hereof, and commanding him to collect same, and to pay to the proper officer in each of such districts the proportion of such tax to which it is entitled under the provisions of this chapter. The said county treasurer shall have the same powers to enforce the collection and payment of said tax as are possessed by the officers now charged by law with the collection of taxes, and the said county treasurer shall be entitled to a commission of one per centum for collecting and paying out said moneys, which commission shall be deducted from the gross amount of said tax before the same is distributed. In issuing their warrants to the collectors of taxes, the board of supervisors shall omit therefrom assessments of and taxes upon the shares of stock of banks and banking associations. *Provided, that*, in the city of New York the statement of the bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city, on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. The tax shall be paid by the respective banks in said city to the said receiver of taxes on or before the thirty-first day of December in said year, and said tax shall be collected by the said receiver of taxes and shall be by him paid into the treasury of said city to the credit of the general fund thereof. This section is not to be construed as an exemption of the real estate of banks or banking associations from taxation. No shares of stock of such banks and banking associations, by whomsoever held, shall be exempt from the tax hereby imposed."

SECTION 188:

"§ 188. *Franchise Tax on Trust Companies.*—Every trust company incorporated, organized or formed under, by or pursuant to a law of this state, and any company authorized to do a trust company's business solely or in connection with any other business, under a general or special law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such

c. 739; and in its final form became § 24 of the Tax Law of 1909. In this form § 24 is evidently a more recent enactment than § 13, and, so far as inconsistent, impliedly repeals it. The provision of § 13 for taxing bank shares in the district where the bank is located remains in force. It will be observed that § 24 declares (in obedience to

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corporate or organized capacity, an annual tax which shall be equal to one per centum on the amount of its capital stock, surplus, and undivided profits."

SECTION 189:

"§ 189. *Franchise Tax on Savings Banks.*—Every savings bank incorporated, organized or formed under, by or pursuant to a law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to one per centum on the par value of its surplus and undivided earnings."

SECTION 191:

"§ 191. *Tax upon Foreign Bankers.*—Every foreign banker doing business in this state, shall annually pay to the treasurer a tax of five per centum on the amount of interest or compensation of any kind earned and collected by him on money loaned, used or employed in this state by such banker. The term, 'doing a banking business,' as used in this section, means doing such business as a corporation may be created to do under article three of the banking law, or doing any business which a corporation is authorized by such article to do. The term 'foreign banker doing a banking business in this state,' as used in this section, includes:

"1. Every foreign corporation doing a banking business in this state, except a national bank.

"2. Every unincorporated company, partnership or association of two or more individuals, organized under or pursuant to the laws of another state or country, doing a banking business in this state.

"3. Every other unincorporated company, partnership, or association, of two or more individuals, doing a banking business in this state, if the members thereof, owning more than a majority interest therein, or entitled to more than one-half of the profits thereof, or who would, if it were dissolved, be entitled to more than one-half of the net assets thereof, are not residents of this state.

"4. Every nonresident of this state, doing a banking business in this state, in his own name and right only."

§ 5219, Rev. Stat.) that "the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State;" that the valuation of the shares of going concerns is to be ascertained by dividing the amount of capital stock, surplus, and undivided profits by the number of shares; the valuation, in the case of banks in liquidation, to be fixed by dividing the actual assets by the number of shares; that a fixed rate of tax equal to one per centum upon the value thus ascertained is imposed without deduction because of the personal indebtedness of the owners, or for any other reason; that the tax is in lieu of all other state taxation upon the choses in action and personal property held by the bank whose value enters into the valuation of its shares of stock; that this section is not to be construed as an exemption of the real estate of the banks from taxation; and that no share of stock of such banks, by whomsoever held, is to be exempt from the tax imposed. In construing § 24 the Court of Appeals of New York has held (*People ex rel. Bridgeport Savings Bank* v. *Feitner*, 191 N. Y. 88, 96) that the effect of introducing into the section the limitation prescribed by § 5219, Rev. Stat., is such that if any bank is located in a tax district where the rate is less than one per centum, its stockholders are entitled to a reduction to conform to the local rate.

Respecting other moneyed capital, trust companies, by § 188, are subjected to an annual franchise tax "equal to one per centum on the amount of its capital stock, surplus, and undivided profits." The practical burden of such a tax (which of course falls eventually upon the stockholder) is presumably not materially different from the burden of a tax at the same rate imposed upon the individual stockholder on a valuation of his shares arrived at by taking into consideration the same elements of capital stock, surplus, and undivided profits. And of course the stock-

holder has no relief from such a franchise tax because of his individual debts. By § 189 savings banks are subjected to a franchise tax of one per centum on the par value of the surplus and undivided earnings. These institutions are thus apparently taxed upon the basis of what they possess over and above what they owe to their depositors. The individual banker, by §§ 14 and 25, is taxed at the place where his business is located upon the "amount of capital invested in his banking business."

It is not insisted that this tax law discriminates against national banks or the stockholders thereof as compared particularly with individual bankers, trust companies, or savings banks. The ground of complaint is that § 24, in providing that owners of bank stock (state or national) shall not be entitled to deduction from the taxable value of their shares because of their personal indebtedness, is contrary to the restriction contained in § 5219, Rev. Stat., that the shares of national banks shall not be taxed "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," because under § 21 of the Tax Law all persons are permitted to deduct their debts from their other taxable personal property in general, including, as is claimed, other moneyed capital.

Plaintiff in error relies chiefly upon the decision of this court in *People* v. *Weaver*, 100 U. S. 539. That case was in effect a review of the decision of the Court of Appeals of New York in *People* v. *Dolan*, 36 N. Y. 59. The question was as to the validity of an assessment and taxation of national bank shares in the City of Albany under the state law of April 23, 1866 (N. Y. Laws 1866, p. 1647), without deduction because of the indebtedness of the taxpayer, in view of the fact that under other laws the owners of other kinds of personal property were entitled to have the amount of their debts deducted from the valuation for the purposes of taxation. The state court in the *Dolan*

Case had justified the method adopted in taxing the bank shares, upon reasoning that assumed "that while Congress limited the state authorities in reference to the ratio or percentage levied on the value of its shares, which could not be greater than on other moneyed capital invested in the State, it left the matter of the relative valuation of the shares and of other moneyed capital wholly to the control of state regulation." This court held that the clause in § 5219,—"that the taxation shall not be at a greater rate than is assessed upon other moneyed capital," etc., meant that the taxation upon shares should not be greater than on other moneyed capital, taking into consideration both the rate of assessment and the valuation. In other words, that the restriction contained in the act of Congress had to do with the actual incidence and practical burden of the tax upon the taxpayer.

This decision was followed by several others to the same effect. In *Supervisors* v. *Stanley*, 105 U. S. 305, it was pointed out that the decision in the *Weaver Case* had not the effect of declaring the New York Act of 1866 void, but only of deciding that the tax there in question was void because the taxpayer had been refused the same deduction for his debts that was allowed to other taxpayers having moneyed capital otherwise invested. *Hills* v. *Exchange Bank*, 105 U. S. 319, and *Evansville Bank* v. *Britton*, 105 U. S. 322, applied the same principle.

But the pertinent statutes in the *Weaver Case* differed from those now before us, and the authority of that decision is not controlling. The act of 1866 is quoted in full in the report, 100 U. S. at p. 540. And in that case, as the opinion shows (pp. 542, 543), it was not disputed—"that the effect of the state law is to permit a citizen of New York, who has money capital invested otherwise than in banks, to deduct from that capital the sum of all his debts, leaving the remainder alone subject to taxation, while he whose money is invested in shares of bank stocks can make

no such deduction. Nor, inasmuch as nearly all the banks in that State and in all others are national banks, can it be denied that the owner of such shares who owes debts is subjected to a heavier tax on account of those shares than the owner of moneyed capital otherwise invested, who also is in debt, because the latter can diminish the amount of his tax by the amount of his indebtedness, while the former cannot. That this works a discrimination against the national bank shares as subjects of taxation, unfavorable to the owners of such shares, is also free from doubt."

The Tax Law of New York now in question is materially different. As already shown, moneyed capital is dealt with for the purposes of taxation upon lines different from those upon which the taxation of other personal property proceeds. By §§ 13 and 24 state bank shares and national bank shares are both dealt with, and they are treated alike, being assessed not upon the basis of market values, but upon a valuation determined by a consideration of the capital stock, surplus, and undivided profits (yielding what is commonly known as "book value"), and leaving out of consideration other elements, such as good will and the like, which enter into the determination of the actual market value of such shares. On the other hand, personal property in general is by § 21 to be assessed at its full value, which presumably means market value. Section 24, instead of subjecting the owners of bank shares to taxation at the rate locally obtaining for other personal property, imposes a "flat rate" of one per centum upon the valuation, with the proviso, as held in the *Feitner Case, supra*, that if the local rate be less than one per centum, the owners of shares in the bank have the benefit of it.

Enough has been said to show that the decision in the *Weaver Case*, which had to do with a tax assessed upon bank stock on the basis of the same method of valuation and the same rate of assessment as personal property in

general, including other moneyed capital, but without allowance for the indebtedness of the taxpayer, although such allowance was made to the owners of personal property in general, including other moneyed capital, is not to be deemed conclusive upon the present controversy, in view of the differences in the taxing laws.

The *Weaver Case*, however, and others that followed it, did establish that the question whether an owner of national bank shares has been subjected to a state tax in excess of the limitation imposed by § 5219, Rev. Stat., is a practical question, to be determined by considering whether he is actually discriminated against in favor of other moneyed capital in the hands of individual citizens of the State. And the meaning of the term "other moneyed capital" has been elucidated by several decisions, of which the leading one is *Mercantile Bank* v. *New York*, 121 U. S. 138. This was a suit brought by a national bank to restrain the collection of taxes assessed upon its stockholders under New York Laws 1882, c. 409, § 312, an enactment that followed the general lines of the act of 1866, dealt with in the *Weaver Case* and quoted in the opinion of the court therein, except that in obedience to that decision the act of 1882 required that—"in the assessment of said shares, each stockholder shall be allowed all the deductions and exceptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this State." The contention was that the State had not complied with the condition contained in § 5219 of the Revised Statutes, because it had by its legislation expressly exempted from all taxes in the hands of individual citizens numerous species of moneyed capital, while subjecting national bank shares and state bank shares in the hands of individual holders to taxation upon their full actual value, less only a proportionate amount of the real estate owned by the bank. The court (speaking by Mr. Justice Matthews) in examining and

disposing of this contention, after reviewing the previous decisions of this court bearing upon the subject, proceeded to expound the true intent and meaning of § 5219 of the Revised Statutes as follows (p. 153):

"It follows, as a deduction from these decisions, that 'moneyed capital in the hands of individual citizens' does not necessarily embrace shares of stock held by them in all corporations whose capital is employed, according to their respective corporate powers and privileges, in business carried on for the pecuniary profit of shareholders, although shares in some corporations, according to the nature of their business, may be such moneyed capital. . . . The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people, and to facilitate the operations of the Treasury of the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people, it was required that this capital, so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not subjects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States. It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent

the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

And again (p. 157): "The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale

or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property. Accordingly, it was said in *Evansville Bank* v. *Britton*, 105 U. S. 322: 'The act of Congress does not make the tax on personal property the measure of the tax on the bank shares in the State, but the tax on moneyed capital in the hands of the individual citizens. Credits, money loaned at interest, and demands against persons or corporations are more purely representative of moneyed capital than personal property, so far as they can be said to differ. Undoubtedly there may be said to be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital. But the rights, credits, demands, and money at interest mentioned in the Indiana statute, from which *bona fide* debts may be deducted, all mean moneyed capital invested in that way.' This definition of moneyed capital in the hands of individuals seems to us to be the idea of the law, and ample enough to embrace and secure its whole purpose and policy."

The rule of construction thus laid down has been since consistently adhered to by this court; *Palmer* v. *McMahon*, 133 U. S. 660, 667; *Aberdeen Bank* v. *Chehalis County*, 166 U. S. 440, 454; *National Bank of Wellington* v. *Chapman*, 173 U. S. 205, 214; *Commercial Bank* v. *Chambers*, 182 U. S. 556, 560; *Jenkins* v. *Neff*, 186 U. S. 230.

According to this practical test, it seems to us that the scheme adopted by the State of New York for taxing shares in national banks cannot upon this record be denounced as violative of the limitations prescribed by § 5219, Rev. Stat. The holders of shares in state banks are subjected to precisely the same taxation, and with respect to other competitive institutions, such as trust companies, the franchise taxes imposed upon them apparently result in a substantially similar burden upon the

shareholder. Nor is there any discrimination in favor of savings banks. With respect to individual bankers, there is a difference, they being apparently subject to the local rate of taxation and entitled to the privilege of deduction for personal debts; but as they are taxable upon the amount of the capital invested in the banking business, which is normally only such as remains after the deduction of debts, it is not plain that they possess any valuable privilege of reducing the tax assessment by deducting debts. Foreign bankers are separately treated, for reasons sufficiently obvious; but no criticism is made of this. If there be other forms of "moneyed capital in the hands of individual citizens" of the State employed in a banking or quasi-banking business in competition with the national banks, and which are subjected to a more favorable rule of taxation, our attention is not called to them. Moreover, we agree with what was said by the Court of Appeals of New York in the *Feitner Case*, 191 N. Y. 88, 96, that "The State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them." The court there took note of the fact that the flat rate of one per centum assessed upon national bank shares was more favorable to the relator than the general tax rate for the same year in the Borough of Manhattan, where the banks were located. That local rate (for the year 1901), was 2.31733 per centum. In the present case it is stipulated that the general tax rate locally applicable for the year 1908 to personal property, not including bank shares, was 1.61407 per centum. There are other considerations to be weighed in determining the actual burden of the tax, one of which is the mode of valuing bank shares—by adopting "book values"— which may be more or less favorable than the method adopted in valuing other kinds of personal property. As against the owner of bank shares

who, by alleging discrimination, assumes the burden of proving it, and who fails to show that the method of valuation is unfavorable to him, it may be assumed to be advantageous.

Plaintiff in error contends that the statement of the New York court that "When all things are considered, the rate, even without the privilege of deducting debts, is not greater than that applied to other moneyed capital in the hands of individual citizens of the state," is based upon no facts of experience or investigation, and amounts to a pure surmise. We do not think it is to be so lightly treated; but, if it were, it still remains to be said that it was incumbent upon plaintiff in error to show affirmatively that the New York taxation system discriminates in fact against the holders of shares in the national banks, before calling upon the courts to overthrow it; and no such showing has been made.

Nor can we say that the taxing scheme contravenes the limits prescribed by § 5219, Rev. Stat., merely because in individual cases it may result that an owner of shares of national bank stock, who is indebted, may sustain a heavier tax than another, likewise indebted, who has invested his money otherwise. Such is, in effect, the objection urged by plaintiff in error to the position taken by the Court of Appeals of New York. In other words, it is insisted that § 5219 deals with the burden of the tax upon the individual shareholder, rather than upon shareholders as a class. We think this argument is sufficiently answered by reference to the language of § 5219. The declaration is that "the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." And this restriction is imposed upon a grant of authority to tax "all the shares of National banking associations located within the State." The language clearly prohibits discrimination against shareholders in national banks and in favor of the share-

holders of competing institutions, but it does not require that the scheme of taxation shall be so arranged that the burden shall fall upon each and every shareholder alike, without distinction arising from circumstances personal to the individual.

Judgment affirmed.